

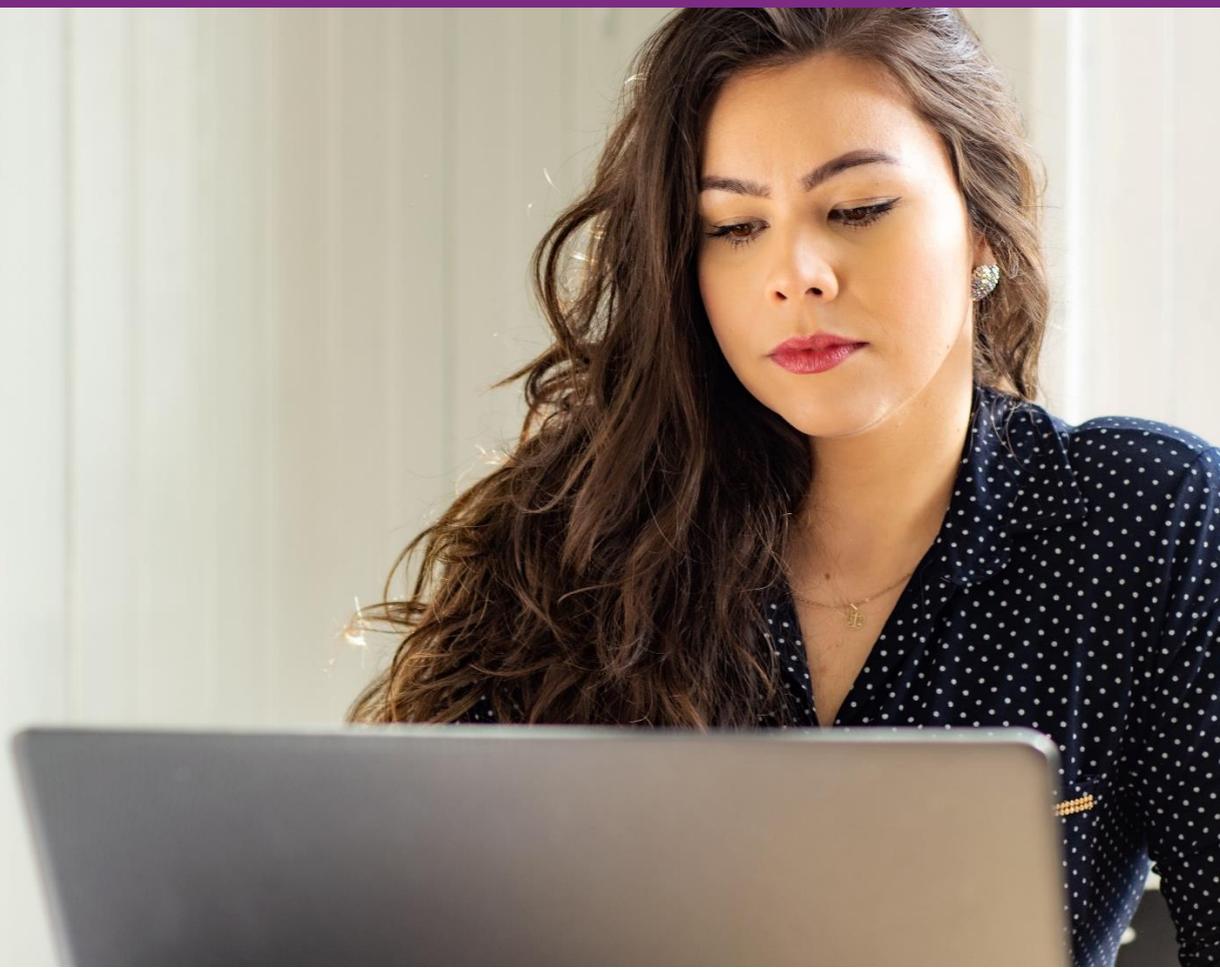
# Ongoing Competence in Legal Services

Research into public attitudes  
July 2021



community  
research

*Bringing the voices of communities into the heart of organisations*



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# 1. Executive Summary

## Introduction

1. As part of its review into ongoing competence in legal services<sup>1</sup>, the Legal Services Board (LSB) commissioned research to understand the public's views on:
  - Whether the current arrangements in place give sufficient confidence in lawyers' ongoing competence; and
  - If not, what mix of measures would give sufficient confidence.
2. Community Research conducted deliberative and quantitative research to gauge public opinion on these issues.
3. The deliberative research involved a panel with 23 members of the public (referred to here as 'panellists') to gain an in-depth and informed response to the research questions. Panellists were recruited from a mix of locations, ages, genders, ethnicities and socio-economic groups. Panellists were also chosen as individuals who had a degree of knowledge or experience to bring to the research, either because they worked in a regulated profession, or because they had some knowledge of the legal services sector from previous research with the LSB and Community Research.
4. The panellists spent four weeks considering the issues in live online focus groups, in an online bulletin board and through quick online polling. During this period, they reviewed a wide range of information and evidence, mostly in the form of videos, with some written information. This included:
  - Information on existing competence requirements for lawyers and other professionals in other regulated sectors;
  - Evidence on areas of increased risk to consumers (taken from the LSB's Call for Evidence review);
  - Expert insights from four people who work with or within the legal profession (representatives from the Solicitors Regulation Authority, the Legal Services Consumer Panel, the Bar Council, and a national law firm) and from a regulator of another profession (the General Medical Council);
  - Information on reasons for and against making changes to the current arrangements and trade-offs in making decisions;

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<sup>1</sup> The ongoing competence project aims to understand if legal regulators have appropriate frameworks in place to ensure that the professionals they regulate remain competent throughout their careers. More information can be found at <https://legalservicesboard.org.uk/our-work/ongoing-work/ongoing-competence>.



- Information on six potential measures that legal services regulators could bring in to ensure ongoing competence amongst lawyers.
5. A quantitative survey with a new sample of 1005 adults from England and Wales was also carried out after the deliberative research was completed. They were selected to be representative of the population in terms of age, ethnicity, gender, and socio-economic profile. The quantitative survey involved a seven-minute video summarising current competence arrangements in the legal services sector and presenting positions for and against making changes to the current system. This was followed by a series of questions aimed at gauging the strength and prevalence of views amongst this population as a whole.

## Main findings

### Public confidence in existing ongoing competence measures

6. The public expects lawyers to be competent<sup>2</sup> and the vast majority of people (95%) believe that lawyers *should* have to demonstrate they remain competent to do their jobs throughout their careers. Just over half (55%) of people assume that lawyers face regular checks on their competence throughout their careers.
7. Panellists said they find it hard to assess competence because they do not know what to look for and most have little experience of working with lawyers. In deliberative discussions, many panellists assumed that competence checks for lawyers are carried out by employers and/or through spot-checks by professional bodies i.e. regulators who have the skills and knowledge of legal services to judge the competence of lawyers.
8. After learning more about the current arrangements for ensuring ongoing competence in legal services, panellists were surprised at the lack of consistent and mandatory requirements for different types of lawyers. Around a third of panellists belonged to other regulated professions (accountancy, teaching, dentistry, nursing, engineering). They noted that in other regulated professions, there is greater consistency in requirements across all practitioners in these professions, and more mandatory requirements compared to law.
9. Panellists were concerned that existing arrangements leave room for incompetence or lack of competence to go undetected and unchallenged. This was a particular concern in areas where people face greater risk of harm (for example, in areas of law where mistakes are more prevalent, where the potential consequences are serious, such as immigration and criminal law, or where people

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<sup>2</sup> Competence here was defined as having the necessary and up-to-date skills, knowledge and attributes to provide good quality legal services.



are more inherently vulnerable, for example due to youth, disability or immigration status).

10. After four weeks of considering the evidence and deliberating the issues, panellists were unanimous that **the current measures do not give them sufficient confidence that lawyers remain competent throughout their careers**. There were several reasons for this:

- While they were prepared to believe that most lawyers were diligent, they considered there were too many gaps in the existing system and too little consistency in competence requirements across lawyers;
- Many felt strongly that it was important for lawyers to stay up-to-date with changes in law and regulations, and they did not have enough reassurance from current continuing professional development (CPD) measures that this was happening consistently or thoroughly enough;
- There was concern that not all lawyers face scrutiny of their competence from, for example, employers or judges, where relevant;
- The limited evidence – either of widespread incompetence or that lawyers are maintaining their competence – reinforced the view that further checks are needed;
- Panellists believed that regulators should have assurance in the competence of those they regulate, and that lawyers should provide regulators with more evidence in order to give that assurance.

11. The quantitative survey involved respondents watching a video that explained the current arrangements and arguments for and against changing them. After viewing this, only 17% of the wider public say they have complete confidence in the measures currently in place to provide assurance of the ongoing competence of lawyers. 47% have some confidence, compared to a quarter (26%) who are not really confident and a further 5% who are not at all confident. Ultimately, while two thirds of people have some confidence in the current arrangements, 79% say that regulators should introduce more specific rules (compared with only 5% of people who say they should not).

12. Reasons for and against changing the current arrangements were presented to survey respondents. When they consider potential reasons *for* changing the current arrangements, there is strong agreement amongst members of the public with the following:

- That consumers currently assume that all lawyers are competent and that more robust checks are in place: 84% agree;
- That the regulators should do more to reduce the risk of a lack of competence undermining public trust in the legal system: 87% agree;



- That there should be more consistency in competence requirements across the legal profession, as there is for other regulated professionals (such as doctors, accountants, teachers and airline pilots): 88% agree;
13. There is less support for the reasons *against* changing the current arrangements, as shown by the levels of agreement with the following statements:
- That lawyers trade on their good reputations, so it is already in their interests to maintain their competence: 61% agree (28% disagree);
  - That meeting new competence requirements by regulators could become a tick box exercise, rather than genuinely maintaining competence: 55% agree;
  - That more rules and requirements could increase prices for customers; 55% agree;
  - That there is no evidence of widespread poor competence: 37% agree (36% disagree).

### Changing the current arrangements

14. Panellists thought that – to ensure public confidence in legal services – there should be mandatory requirements, regular checks, and consistent requirements across all lawyers, covering different types of lawyer (e.g. solicitors through to barristers to notaries) and areas of law (e.g. from advocacy, to conveyancing, to trusts and probate).
15. They felt that – as well as a core set of baseline requirements – competence requirements should be tailored to reflect the diversity of the profession (in types of lawyer, areas of law, seniority/ experience and whether in a large firm, small firm, or sole practitioner). They also wanted to see competence requirements reflect the level of risk posed to people using legal services, with those working in the higher risk areas or with more vulnerable clients facing some degree of greater scrutiny.
16. Panellists considered six different potential measures that regulators could introduce to ensure ongoing competence: a standard competence framework for all lawyers, mandatory CPD, revalidation, spot checks, remediation, and feedback.
17. Panellists felt each approach had both benefits and drawbacks in theory. Although they did not consider in detail how such measures would be implemented (and the potential impacts of implementation, such as costs and time spent by practitioners), they gave an indication of the types of measures that would give them – as members of the public – sufficient confidence in the ongoing competence of lawyers. In the final deliberation session, the panellists concluded that a suite of measures would be the most effective way of maintaining ongoing competence, suggesting regulators consider introducing the following mix of measures:



- A single consistent **competence framework**: Panellists liked that a competence framework could bring *consistency* to a diverse profession, and *transparency* as to what was expected of lawyers (which was seen as a benefit to both lawyers and members of the public). However, they recognised the practical difficulties involved in designing a single framework that would be meaningful and useable for all lawyers. As a result, **they recommended a matrix that reflects both different areas of law and different levels of seniority/responsibility**;
  - **Mandatory CPD** requirements appealed because panellists felt it was very important that lawyers remain up-to-date. They were concerned that the current CPD requirements are patchy and that regulators do not consistently check the training and development activities lawyers complete. They therefore wanted to see **routine and mandatory CPD requirements, with an assessment element** (not just 'attendance only', but also testing knowledge and skills gained from CPD activities);
  - **Recertification linked to competence**: panellists heard how revalidation works in medicine (from the expert video presentation) and felt it was a comprehensive and robust system for checking and ensuring ongoing competence. Most felt that revalidation could be applied to the legal profession and that it would drive up competence overall and root out poor performers. Although there were concerns over the burden it could place on lawyers (and regulators), most panellists supported the idea of some type of revalidation in legal services. They suggested that there should be **a system of linking recertification** (which currently happens through the renewal of practising certificates annually) **to competence**. They felt this could be demonstrated through a range of qualitative measures (such as a portfolio with case reviews, client feedback) and quantitative measures (such as success rates and CPD records);
  - A process of **regulator checks** such as audit or spot checks. Panellists thought there should be regular spot checks for all lawyers **to verify compliance with CPD** and **random or targeted** (where there is an issue identified with an area of law, firm or individual) **'deep-dive' checks**.
18. Panellists also considered feedback and remediation as possible measures to ensuring ongoing competence amongst lawyers:
- With regards to **remediation**, panellists liked the positive supportive approach to maintaining competence, and that it could pick up issues early and potentially prevent more serious competence issues. However, they felt that remediation was dependent on an effective annual appraisal or monitoring system, with a reporting mechanism to a regulator;
  - They felt that **feedback** should potentially play some role in the overall approach to ongoing competence and may be useful in assessing soft skills and



client experience or to support recertification. However, they felt that feedback has less use in ensuring and assessing competence if used in isolation.

### Expectations of regulators

19. In terms of what panellists and the wider public expect from regulators, there is support for more regulatory protection, even if this means a greater burden on lawyers and more costs passed onto consumers.
20. Panellists felt that employers and others (such as judges) have some role to play in maintaining and checking lawyers' competence. However, they believed that, ultimately, it is up to the regulators to seek assurance that competence is being maintained.
21. In any measures the regulators introduce, panellists were keen to stress that they should strive for proportionality, striking the balance between:
  - Systems that are *effective* in picking up lawyers who lack competence, but that are *not overly burdensome* on lawyers (particularly 'good' lawyers);
  - Being *meaningful* (not 'tick-box'), but still *light-touch*.
22. Panellists also thought that regulators need to engage more with lawyers, working with them together to come up with measures that will strike a balance between providing accurate assurance to consumers and benefiting lawyers (or at least ensuring minimum extra burden). They thought that working with lawyers in determining new measures should enable regulators to build upon the good practices already in place.
23. It was important to panellists that the measures chosen are effective in practice, both in maintaining lawyer competence and in verifying that competence requirements are met. Panellists expected regulators to research approaches that work elsewhere and work with lawyers to come up with measures that do in fact maintain competence across the profession and identify any lack of competence.
24. Ultimately, the public wants reassurance that regulators are ensuring a baseline of competence for all lawyers throughout their careers so that – if they need a lawyer – they can have faith that any regulated lawyer they choose will do a good job for them.



## 2. Introduction

### 2.1 Background and Objectives

The Legal Services Board (LSB) is currently reviewing ongoing competence in the legal profession. It has been undertaking the [ongoing competence project](#) to meet one of its policy objectives: that legal regulators have appropriate frameworks in place to ensure that the legal professionals they regulate remain competent throughout their careers.

As part of the project, the LSB has engaged with a wide range of stakeholders from the legal sector and beyond. Through this, it has gathered evidence on potential measures to provide assurance that legal professionals remain competent throughout their careers; that is: they have the necessary and up to date skills, knowledge and attributes to provide good quality legal services.

As part of its review, the LSB wanted to hear from members of the public on:

- Whether the current arrangements in place give sufficient confidence in lawyers' ongoing competence; and
- If not, what mix of measures would give sufficient confidence.

### 2.2 Methodology and sample

The LSB commissioned Community Research to conduct a mix of deliberative and quantitative research to meet its research objectives. These components served different purposes:

- Deliberative research gives people the time, information and opportunity they need to reach informed decisions about complex policy issues where there are different points of view. In short, deliberative research produces detailed findings;
- Quantitative research captures the immediate responses of a large group of people – in this case a nationally representative sample of the population of England and Wales. The findings are statistically robust enough for us to extrapolate and say with sufficient confidence that they reflect the views of the population as a whole. In short, quantitative research produces broad findings.

#### Deliberative forum methodology and sample

The deliberative research involved 23 members of the public taking part in a four-week deliberative panel, which included:



- Two introductory online focus groups to explain the process and the subject matter, to build panellists' commitment and enable them to 'meet' others on the panel;
- A three-week online forum, involving a mix of:
  - 'Evidence' sessions in the forms of explanatory videos, information from 'expert witnesses' (members of the profession, legal regulators and representative bodies, consumer representatives and other sector regulators), information sheets and weblinks;
  - Written 'bulletin boards' where panellists responded to questions and considered and responded to others panellists' views;
  - Mini polls to capture small-scale quantitative data on panellists' views on key questions;
  - Two final deliberative sessions, where panellists were placed in four groups to reach a consensus on whether they thought change was needed, and if so, what and why.

The deliberative panel was designed to give participants time to consider and reflect on a large amount of information about competence, competence checks and the views of different stakeholders. The design also enabled them to consider the views of other panellists, to reach informed opinions, and to work together towards consensus on the issues.

The full content of the deliberative panel, including questions and materials, is included in the [technical appendices](#).

The **sample** of the panel was designed to be a diverse group of 23 people from England and Wales in terms of their age, gender, socio-economic background and ethnicity. However, the sample also included people who were specifically selected to bring a more informed or different perspective to the debate:

- Most had recently taken part in previous LSB research on legal services, and so had a baseline of knowledge of legal services or legal services regulation:
  - 11 had completed research on quality indicators;
  - Four were small business owners who had completed research on lawtech.
- Eight were recruited as regulated professionals in other sectors, including teaching, nursing, dentistry, accountancy and engineering. These panellists brought experience of competence requirements from their professions.

As a result, the panel was not designed to be completely reflective of the population at large, but instead to bring people with different experiences and perspectives together to facilitate rich debate. All panellists except the four small business owners were recruited via the Panelbase market research panel.



Fuller details on the deliberative panel sample are included in the technical appendices.

## Quantitative research methodology and sample

Quantitative research comprised a 15-minute survey amongst a sample of 1005 people from England and Wales, designed to be as nationally representative as possible. The survey ran from 16<sup>th</sup> – 19<sup>th</sup> March 2021. The survey included:

- A 7.5-minute video on competence in legal services and the case for and against change;
- 10 survey questions, including two open-ended questions, focusing on assumptions and expectations of competence in professions, confidence in competence in legal services, response to arguments for and against change, and expectations of regulators.

Further detail on the quantitative methodology and sample (including materials and video scripts) can be found in the technical appendices.

## 2.3 Notes on reading this report

### Terminology

The report distinguishes between deliberative findings and quantitative findings in the following ways:

- Findings from **deliberative research** refer to 'panellists' (i.e. the 23 people who took part in the deliberative panel). Findings are presented in the past tense, i.e. as what this small group of people said/ thought/ believed at that moment in time;
- Findings from **quantitative research** refer to 'respondents' (i.e. the 1005 nationally representative members of the public who responded to the survey). They are also reported as the views/ beliefs of 'members of the public'/ 'the public', given that – statistically speaking – they are representative of the views/ beliefs of the public as a whole. Findings are presented in the present tense because we can have relative confidence (statistically speaking) that these findings are what the public thinks currently.

The report includes direct quotes from panellists in their own words to illustrate the findings. To protect their identity, quotes are anonymous, but include panellists' gender, age, region/ nation and (if relevant) profession.

### Report structure

The main findings of the research are structured as follows:

1. Public confidence in current ongoing competence measures:



- a. Spontaneous expectations and assumptions regarding competence (and competence checks) in legal services;
  - b. Views on the current arrangements in legal services;
  - c. Impact of evidence of areas of increased risk to consumers and of views of those within the legal industry;
  - d. Confidence in the current ongoing competence arrangements.
2. Changing the current ongoing competence arrangements:
- a. The public's views on whether regulators should strengthen requirements;
  - b. Reasons for and against changing the current arrangements;
  - c. Expectations of regulators and others in assessing ongoing competence;
  - d. Guiding principles for ensuring ongoing competence amongst lawyers;
  - e. Panellists' recommended mix of competence measures.

### About the evidence presented to the deliberative panel

The aim of the deliberative panel was to enable panellists to review and consider a wide range of evidence on competence (and competence arrangements) in legal services. The majority of the evidence came from the [Call for Evidence review](#) that the LSB conducted prior to the research. Evidence also came from four 'expert witness' videos recorded by people who work with and within the legal sector (a regulator, a professional body, a solicitor, a consumer body) and one expert witness from a regulator in another regulated profession. However, as the LSB found in its Call for Evidence, there are few identified, objective sources of data about competence in legal services available at present. As the LSB concluded in its [summary of evidence](#) from the review:

'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.'



### 3. Public confidence in current ongoing competence measures

The research explored beliefs regarding the competence of legal professionals (and other professionals) and assumptions around existing systems for ensuring and checking competence. In both the deliberative and quantitative research, panellists and respondents were asked for their spontaneous beliefs and expectations at the start of the research, before they had received further information on the existing measures. They then received information and evidence on the existing measures and were asked for their informed responses. This section details the findings of the public's unprompted assumptions and expectations and their more informed responses regarding competence amongst lawyers.

#### 3.1 Spontaneous expectations of competence in legal services

##### **Summary of key findings**

The public expects lawyers to be competent, but some doubt that all lawyers are competent. However, they find it hard to assess competence because they do not know what to look for and most have little experience of working with lawyers.

A small number of the panellists assumed that, as long as a professional (including a lawyer) was qualified, they were competent. Prior to the research, they had not really questioned that assumption.

"I think you just presume that people in their profession are competent when you go to them for a service." Panellist (Female, 35-54, Wales)

"Any company or firm which presents itself as part of a recognised professional trade body/ regulator would, I assume, be staffed by qualified and competent staff." Panellist (Retired chartered surveyor, Male, 55-74, Wales)

"To be honest I don't really look for how skilled and knowledgeable they are as I (perhaps naively) assume that they will have the knowledge because they are qualified." Panellist (Teacher, Female, 25-34, South of England)

Other panellists believed it was necessary to take steps to establish whether a lawyer was capable of doing a good job for you before choosing them. They were more conscious of variations in the 'quality' of legal professionals, and some had experience of lawyers who they felt had not done a good job for them or family members. Some



also felt it was hard to trust lawyers, in contrast to some other professionals, such as doctors, dentists and nurses, where there was a firmer basis of trust. Poor experience with lawyers also features in the wider population as a reason for people having limited confidence in the current system. The quantitative research shows that 8% of people who say they do not have sufficient confidence in the current arrangements cite negative experiences as the reason.

When asked directly how they could tell whether a legal professional was competent or not, panellists thought it was hard to judge, for several reasons:

- The law and legal processes are opaque and unfamiliar to most laypeople (in contrast to professions such as doctors and nurses where it is more easily apparent if they are doing a good job)
- They do not know what to look for;
- Most have little experience with lawyers, which exacerbates their limited knowledge of what to look out for.

“Unless you have prior knowledge of the particular sector, I'm not sure that it is possible to determine whether a professional is competent or not. In many instances I wouldn't even know what questions to ask, what professional standards exist, what CPD is on offer for the professional.” Panellist (Female, 35-54, South of England)

“It's even tougher to trust legal professionals, because, in my head at least, there are a lot of unscrupulous lawyers out there (some out to make a quick buck from, e.g., PPI, some out there to make money from innocent mistakes, and partly because that's what a lot of lawyers do – lie in order to win).” Panellist (Teacher, Male, 35-54, Midlands)

“A layperson would not be able to determine if they are engaging with a competent lawyer or not just from speaking to them or even in a meeting with them. The lawyer could come across as competent in a discussion with them, but it is a different matter altogether when they are actually trying to resolve an issue that you have presented them with.” Panellist (Retired accountant, Female, 75+, Midlands)

A small number of panellists were more confident in assessing the competence of legal professionals. They tended to be those with experience of commissioning lawyers and other professional services, particularly through their work (especially those who were involved in running small businesses). They talked about established processes for choosing professional services, such as reviewing track records, asking for references and seeking multiple quotes.

To judge the competence of lawyers, most panellists said that they would rely on various (subjective) proxy indicators of competence, particularly recommendations from people they know. They also said they would consider:



- The reputation of legal firms and individuals, which was judged via word-of-mouth, and personal experience of working with lawyers/ firms in the past;
- Online reviews;
- 'Gut feel' on meeting lawyers to judge whether they give the impression of competence, for example using technical terminology, asking relevant questions, confidence.

"You can tell if a professional is competent if they have in-depth knowledge and skills. They demonstrate that through their written and practical work... I have judged this... by my interactions with the professional, if they demonstrate to me their knowledge, skill and professionalism." Panellist (Teacher, Female, 35-54, Midlands)

"If I know s/he did a good job for someone whose opinion I trust, I would be likely to assume s/he could do the same for me." Panellist (Teacher, Male, 35-54, Midlands)

Some also talked about more seemingly objective indicators of competence such as qualifications, certificates, membership of professional bodies and evidence of CPD. For some, longevity can be a partial proxy for competence – they assumed experience in a field would bring expertise, and that lawyers with insufficient competence would not last long.

"Newly qualified lawyers may be competent by having passed their exams for example, but it's really undertaking and living their role which makes them more competent and knowledgeable." Panellist (Female, 35-54, South of England)

"I think if qualifications for a professional are on the wall then you just presume they are competent." Panellist (Nurse, Female, 35-54, North of England)

"Longevity would be a factor - the bad lawyers would hopefully go out of business as word got round." Panellist (Chartered engineer, Male, 55-74, North of England)

However, panellists recognised flaws in all these proxy measures, saying that they can be misleading, and do not necessarily indicate competence. For example:

- Recommendations and reviews may come from fellow laypeople, who are no better able to judge (technical) competence;
- Recommendations and reviews may relate to very different circumstances than your own;
- Reviews may be false or posted by friends and family;
- Confidence and charisma can hide insufficient competence;
- Certificates do not necessarily mean competence – a certificate may have been gained a long time ago, may not be relevant to a client's need, or may have



been gained simply for attendance, rather than demonstrating competence (or for a low threshold of skills or knowledge);

- Experience does not necessarily make someone more competent.

“I try to bear in mind that it's very easy to be distracted by skills like charisma and extroversion, which of course don't actually have any objective link to their competence... Assessing whether their approach is because of considered competence or unconsidered ignorance can be really hard to judge!” Panellist (SME owner, Male, 25-34, South of England)

“I believe that often people mistake experience for competence.” Panellist (Male, 35-54, South of England)

“How do we know that we can rely on another lay-person's recommendation of a lawyer's knowledge and 'technical' skills? - We do not know which is why I tend not to rely on another lay person's recommendations.” Panellist (Teacher, Female, 35-54, Midlands)

## 3.2 Spontaneous beliefs about competence checks in professions

### Summary of key findings

Most people assume – and expect – that professionals (including lawyers) will face regular checks on their competence throughout their careers. Within the legal profession, many panellists assumed that competence checks are carried out by employers and/ or through spot-checks by professional bodies. A few, however, assumed that lawyers face no further checks on competence once they have qualified into the profession.

### Assumptions about competence checks

Most panellists in the deliberative forum assumed that lawyers (and other professionals) are required to maintain their competence regularly. However, there was more uncertainty as to whether lawyers, engineers and accountants faced regular checks on competence, and more certainty that airline pilots, nurses, doctors and teachers do face regular checks.

With regards to lawyers, many panellists assumed that competence would be maintained through continuing professional development, and checked through spot-checks/ audits by professional bodies. Some panellists assumed that law firms will have internal systems to check and maintain lawyers' competence, and this meant panellists might be less likely to scrutinise someone's competence if they were part of a large firm.



“I think it is the training they receive in the firm that they are in which plays a significant role in the competence that lawyers have throughout their careers.”  
Panellist (SME owner, Male, 35-54, South of England)

“I think I would be more willing to accept someone's competence at face value if they were part of a larger organisation, for example I would expect a doctor to have their competence regularly assessed by their employer's hospital, whereas I wouldn't necessarily assume that a solo practitioner accountant or solicitor (without a manager overseeing their competence) necessarily had anyone but me checking their competence.” Panellist (SME owner, Male, 25-34, South of England)

In the deliberative research, there were several panellists who thought that there probably were no formal regular checks beyond qualification, and that competence would not necessarily be checked unless there were complaints against a lawyer.

The quantitative survey shows that the majority of people assume that various regulated professionals – including lawyers – face regular competence checks in their careers. However, as Figure 1 below shows, amongst the wider public fewer people think that lawyers face checks (55% agree) than do airline pilots (88% agree), doctors (74% agree) and nurses (74% agree). Echoing views from the deliberative panel, there is also more doubt over whether lawyers face competence checks – 30% are unsure.

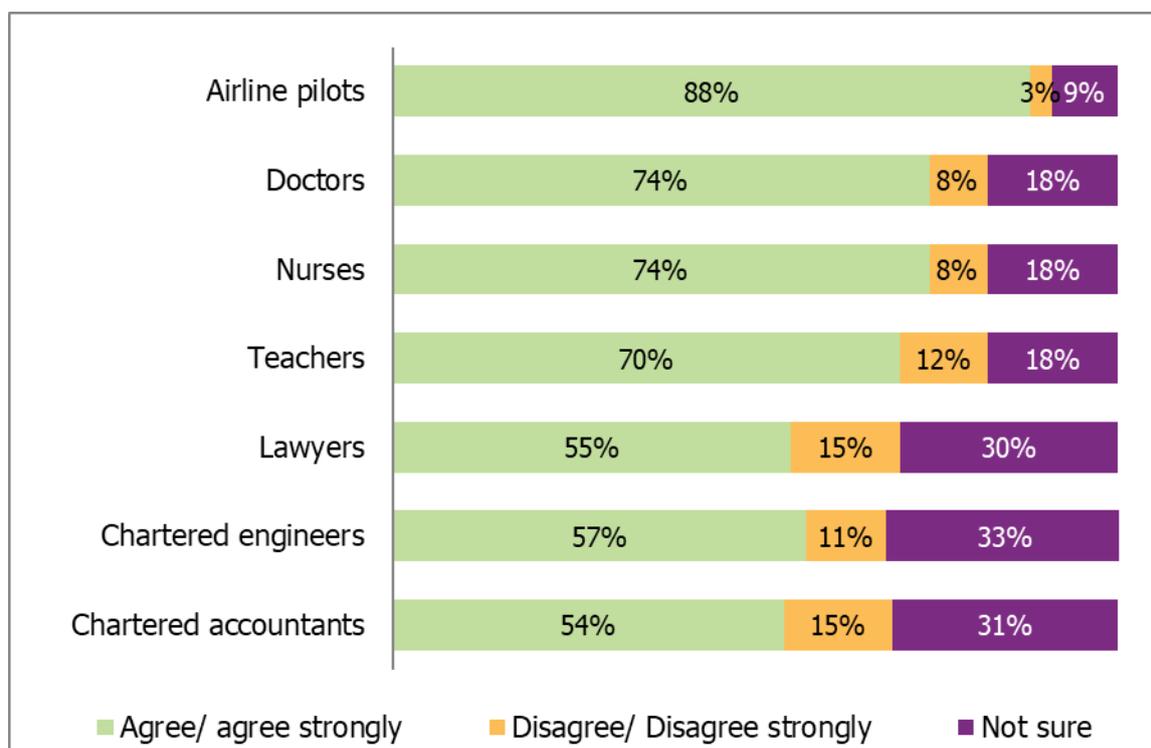


Figure 1: Q: To what extent do you agree or disagree that these professionals have regular checks to make sure they remain competent? (Base: Members of the public; n=1005, totals may not sum to 100% due to rounding)



## Expectations of competence checks

In early discussions, before they found out more about the current arrangements and the potential impact of insufficient competence, panellists thought that all professionals should face regular checks. They felt that checks were most important (and should be more rigorous) for doctors, airline pilots and nurses, where actions and decisions can have 'life or death' implications. However, many panellists acknowledged that other professionals (such as teachers, lawyers, engineers and accountants) also have substantial impacts on people's lives, wellbeing and finances, so their ongoing competence is important. They felt that the type and level of checks should reflect their role and the level of risk that their work poses to the public, and the opportunity to put mistakes right if they arise.

"The most rigorous [checks] are reserved for those with a direct impact on life - so doctors, nurses and airline pilots - many people's lives are actually in their hands, their survival depends on these professionals remaining competent at their job at all times - there's no or little prospect of a 'second chance' if they make a mistake. For other professionals, harm may be caused by incompetence but there are usually second and third opportunities for corrective actions." Panellist (Chartered engineer, Male, 55-74, North of England)

"The lawyers, accountants and engineers should have checks, as it is a matter of care and duty to their clients, given the vast range of legal services that an individual may be seeking." Panellist (Female, 35-54, South of England)

Panellists raised some other considerations when thinking how competence checks should apply to different professionals, including:

- Line management or supervision arrangements: it is assumed that some professionals have 'built-in' checks on their competence due to close supervision arrangements. Supervisors and line-managers were expected to pick up on and manage any competence issues;
- Risk to employer: some believed it is in an employer's interest to make sure their employees are competent to avoid being sued;
- Cost of services: some expected a high standard of competence because of the high salaries and fees that some professionals command.

Figure 2 below sets out the results of the quantitative research which show that the vast majority of people expect various types of professionals to demonstrate they remain competent to do their jobs throughout their careers. In all cases other than chartered accountants, a majority of people say these professionals 'definitely' should have to demonstrate they remain competent to do their jobs throughout their careers.

There are high expectations of competence checks for lawyers: 95% of people believe they should have to demonstrate their competence, and 65% 'definitely' believe this.



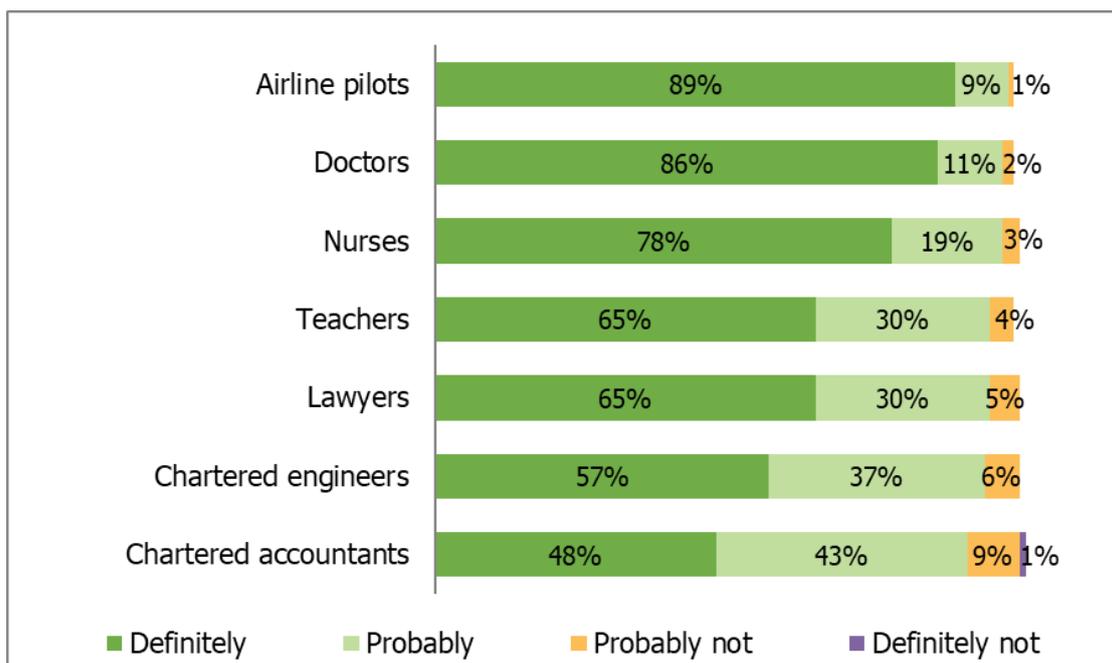


Figure 2: Q: After they have qualified, to what extent do you believe that these professionals should have to demonstrate they remain competent to do their jobs throughout their careers? (Base: Members of the public; n=1005, totals may not sum to 100% due to rounding)

### 3.3 Views on the current arrangements in legal services

#### Summary of key findings

After learning more about the current arrangements for ensuring ongoing competence in legal services, panellists were surprised at the lack of consistent and mandatory requirements for different types of lawyers. Around a third of panellists belonged to other regulated professions (accountancy, teaching, dentistry, nursing, engineering). They noted that in other regulated professions, there is greater consistency in requirements across all practitioners in the profession, and more mandatory requirements compared to law. Some of the existing measures reassured panellists. However, it worried them that existing arrangements still leave room for insufficient competence going undetected and unchallenged. This was a particular concern in areas where people face greater risk of harm (for example, in areas of law where mistakes are more prevalent, where the potential consequences are serious, such as immigration and criminal law, or where people are more inherently vulnerable, for example due to youth, disability or immigration status).



## Response to current arrangements in legal services

In the deliberative forum, panellists' confidence in the ongoing competence of lawyers changed over the course of the four weeks. Early in the process, they found out about the legal services sector, how it is regulated and the measures in place to maintain and check competence, as explained in Figure 3 below.

A video explained some of the measures currently used in legal services to maintain and check competence, including:

- Competence frameworks from various legal services regulators;
- Different types of CPD that is required by all the regulators;
- Systems in some areas of the profession for gathering feedback;
- Accreditation schemes available for individuals and firms; and
- Observation, as is used in the Crown Prosecution Service.

The video explained that, while these measures exist, not all of them are mandatory, and none of them apply across the board to all legal services professionals. Instead they only apply to certain types of lawyers, or in certain circumstances.

The full script for the video which includes the detail on each of the measures discussed can be found in the technical appendices to this report.

*Figure 3: Outline of current measures for maintaining and assessing competence that was presented to panellists*

Most panellists were surprised at the complexity of – and inconsistencies within – the system for ensuring ongoing competence amongst lawyers. As discussed above, most of them had assumed lawyers would face regular competence checks throughout their careers. As a result, the current system is at odds with what they expected of competence assurance in a profession, and law in particular.

“We all thought, after doing it [the deliberative research] for the last [three] weeks, the level of checking by the governing bodies is much, much less than we assumed would be in place. We sort of assumed if you're a solicitor, it would be almost impossible to avoid recording proper CPD hours, proper training schedule, proper competence checks of whatever type... There was almost nothing as detailed as we thought there would be.” Panellists, final deliberative session

To expand, panellists expressed surprise at:

- The complexity of the legal services system and its regulation;



- The lack of consistency in requirements across the different parts of the profession;
- Limited mandatory checks beyond qualification.

“I am surprised that some form of competence framework doesn’t already exist for all of the regulators and even more so that it’s not compulsory.” Panellist (Male, 35-54, South of England)

“My overall impression is that is a very complicated, disjointed process and I feel it needs to be more of a standardised process. It’s not at all what I expected and I am really surprised it is... so much of a mish-mash... I am even more worried now how a member of the public can assess how competent any legal professionals are.” Panellist (Male, 75+, Midlands)

Panellists found some reassurance in some of the existing measures for ensuring ongoing competence in legal services, though each of these elements also had its limitations:

- They thought it was good that all lawyers are required to reflect on development needs and complete CPD to fill gaps;
  - However, panellists were surprised there are not regular assessments, particularly to ensure lawyers are up-to-date with the law, which they assumed changed regularly;
- Panellists thought that accreditation schemes (such as offered by the Law Society) seem rigorous, but noted that they are not mandatory or for all lawyers;
- Some liked that there were competence frameworks in place for solicitors and barristers;
  - But were surprised that there were not mandatory requirements for employers to implement these.

“I am surprised that some form of competence framework doesn’t already exist for all of the regulators and even more so that it’s not compulsory.” Panellist (Male, 35-54, South of England)

“The Law Society accreditation scheme sounded very comprehensive and well controlled, but then it said it was completely voluntary which rather undermines it.” Panellist (Retired chartered surveyor, Male, 55-74, Wales)

In early discussions in the deliberative forum, several panellists were reassured by the existing arrangements. A minority assumed the number of regulators mean competence is closely monitored, and that there was little need for change.



## Comparing competence checks in other professions

Panellists considered examples of competence requirements from other professions such as aviation, teaching, engineering and accountancy via a video<sup>3</sup>. They also watched a video about revalidation for doctors in greater detail and discussed whether this would be an appropriate system to consider in legal services<sup>4</sup>.

After watching the videos, panellists were asked what stood out to them. They expressed surprise at some of the differences between how ongoing competence is assessed in other professions compared to legal services, and in particular that other professions tend to have:

- Consistent standards and approach across the profession, such as:
  - Standard competence requirements and a single checking process across all individuals within a profession (most professions);
  - A single competence framework of standards (teachers, engineers, airline pilots).
- Regular mandatory requirements, such as:
  - CPD records and returns (doctors, nurses, engineers, accountants);
  - Monitoring/ audit/ quality assurance visits (teachers, engineers, accountants);
  - Revalidation (doctors, nurses).
- A greater use of peer review/ feedback (most professions).

“The legal sector could take a large amount of information from other professions and apply it to their competency and CPD frameworks. I didn't realise that the legal sector has large holes in the way members are kept up to date or held accountable for maintaining professional development.” Panellist (Nurse, Female, 35-54, North of England)

“The legal profession seems to be ineffectively self-regulating even though they have oversight from several governing bodies. Compared to other professions, there is very little in the way of assessing competencies and there is less governance than other professions.” Panellist (Teacher, Female, 35-54, Midlands)

After considering how competence is assured within other professions, panellists felt there are some changes which would give them greater confidence, primarily in terms of ensuring greater consistency, implementing mandatory competence requirements, and regular checks. Some of the panellists who work in other regulated professions expressed surprise that lawyers do not have the same level of scrutiny and rigour as

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<sup>3</sup> The full script for the video is available in the technical appendices to this report.

<sup>4</sup> Panellists considered a video where a representative of the General Medical Council explained how revalidation works for doctors, why it was brought in, and its impact.



they experience in their professions. Panellists' response to specific initiatives used in different professions is discussed in greater detail in the [appendices](#) at the end of this report.

### Considering the impact of competence on risks to consumers

Partway through the deliberative forum, panellists considered information regarding areas of law where people face more risk of harm or negative consequences. The examples presented to them included consumers facing greater risks due to:

- More severe consequences in some areas of law (e.g. where there is more at stake such as losing liberty, access to family, or significant amounts of money);
- Clients being more vulnerable, for example, due to being young, having learning disabilities, seeking asylum or other circumstances or characteristics affecting their ability to understand proceedings or express themselves;
- Evidence of poor practice in some areas (as identified by information from regulators, judges and public bodies), for example, in advocacy, immigration and conveyancing.

Many panellists were very surprised that some of these issues exist, and found certain points particularly influential, including that<sup>5</sup>:

- These issues can negatively affect some of the most vulnerable consumers as they are more likely than others to experience disadvantage/ harm;
- Insufficient competence amongst lawyers can have a profound effect on people's lives, especially where their liberty, livelihood, or asylum is concerned;
  - Some had not previously considered this, and had assumed that mistakes in law had less of an impact on people's lives than mistakes in other professions such as medicine;
- The volume of errors evidenced in areas such as conveyancing reminded some panellists of errors they had experienced in buying and selling property;
- Some lawyers were under-prepared and that there were reports that standards of advocacy have fallen in some areas, such as case preparation;
- Issues have gone on for some time, seemingly without being addressed through competence requirements and checks.

For nearly all panellists, this information reinforced their belief that the legal profession should have a baseline standard of ongoing competence, and that this should be checked by regulators. One of the panellists who had previously been confident in the existing arrangements for ensuring lawyers' ongoing competence changed their mind.

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<sup>5</sup> Evidence on the risks to consumers came from the LSB's report [Ongoing Competence: Call for evidence themes and summary of evidence](#); February 2021



“The ‘consequences of the law’ (as the video put it) are gigantic. Much bigger than, say, a teacher having an off-day in the classroom.” Panellist (Teacher, Male, 35-54, Midlands)

“It’s not right that clients’ lives are at risk because of incompetent lawyers or lawyers that have not prepared properly. A lot of these people are extremely vulnerable and need more protection than the average person but they are being let down in some areas...To hear that in some areas standards have been declining in core skills, case preparation and the basic ability to ask the right questions is unbelievable! How have they been allowed to practice and get away with it for so long?” Panellist (Female, 35-54, South of England)

However, some panellists also questioned some of the evidence about competence in the legal profession currently. Specifically, they wondered whether the scale of errors in conveyancing was more acceptable given the volume of conveyancing transactions carried out each year. They felt it would be necessary to consider errors as a proportion of total activity, and comparing this with other areas of law.

There were also questions over the impact of system pressures on quality and competence. For example, some wondered whether drops in the quality of some advocacy was down to changes in the availability of legal aid possibly putting greater pressure on the system and lawyers. They also felt that some of the areas where there were concerns over competence are areas where they assumed there is less money in the system, which would put pressure on lawyers, and be less likely to attract the most proficient lawyers (who could find better-paid work more easily).

A small number of panellists also raised questions over whether there were some areas of law that needed less regulatory intervention than others. In particular, they talked about areas of law that are used by professional customers and which pose less risk to members of the public, thereby reducing the ‘public protection’ reason for regulation.

“The only area of law which perhaps should not be subject to as stringent checks as other law is perhaps areas such as media law and libel law which I consider to be areas... where life and liberty are not at risk. Areas of law such as international contracts and conveyancing, I understand require competent advocates, but... I have to be honest and say that I am less concerned about the vulnerability of these areas to incompetency as they do not impact me personally and there is no chance that they ever would.” Panellist (Teacher, Female, 35-54, Midlands)

### Considering the views of those within the legal industry

In the last piece of formal ‘evidence’ presented to them, panellists considered four videos from ‘expert witnesses’ who work in or alongside the legal services industry.



The 'expert witnesses' were all asked to record a video (up to three minutes long) responding to the following questions:

- Do the arrangements now in place within legal services provide sufficient confidence in the competence of lawyers throughout their careers? Why/ why not?
- If not, what changes are needed to give this?

The four 'expert witnesses' were representatives from:

- The Solicitors Regulation Authority (SRA);
- The Legal Services Consumer Panel (LSCP);
- The Bar Council;
- A national law firm and member of the Law Society's Junior Lawyers Division

Overall, the insights from these 'expert witnesses' had an impact on panellists' views, and some panellists became more confident in the existing arrangements after viewing the videos recorded by each expert. Figure 4 below shows the shifts in response to a poll asking whether the arrangements now in place within legal services gave panellists sufficient confidence in the competence of lawyers throughout their careers:

Number of panellists who said...	Before viewing expert witness videos	After viewing expert witness videos
... <b>Yes</b> , the arrangements now in place within legal services give them sufficient confidence in the competence of lawyers throughout their careers	2	5
... <b>No</b> , the arrangements now in place within legal services <u>do not</u> give them sufficient confidence in the competence of lawyers throughout their careers	17	13
... <b>Not sure</b> whether the arrangements now in place within legal services give them sufficient confidence in the competence of lawyers throughout their careers	4	5

Figure 4: Panellists' responses to the question: Do the arrangements now in place within legal services give you sufficient confidence in the competence of lawyers throughout their careers? (Base = 23 panellists)

Many panellists were impressed at some of the systems and processes currently in place to maintain lawyers' competence, described by the expert witnesses, such as the training and support available to barristers through chambers and circuits and to solicitors through their firms (as described by the Bar Council and law firm representatives respectively).



Several panellists responded positively to the following arguments that witnesses put forward to say that the current arrangements are working, such as that:

- The regulators see little evidence of insufficient competence;
- Lawyers learn through practical experience, which builds their competence;
- Solicitors are best placed to decide what they need to further their professional development, and that mandating CPD risks it becoming a tick-box exercise pushing solicitors through unnecessary training courses;
- There are complaints processes and insurance in place to compensate clients where things go wrong;
- Barristers depend on reputation for their work, and that this, along with professional pride, drives them to maintain their competence;
- There seemed to be lots of training on offer for barristers, and encouragement to take this up.

“I also agree that sending people on endless CPD courses is largely meaningless as they're not tailored specifically enough. It becomes a ‘tick box’ exercise and, therefore, a waste of everyone's time.” Panellist (Teacher, Male, 35-54, Midlands)

As a result of these arguments, some panellists had more confidence in the current measures for ensuring lawyers’ ongoing competence than they had at the start of the process. This was particularly the case with regards to the current arrangements for barristers.

“The first video highlights that the barrister sector feels very close knit and barristers obviously care a huge amount about their reputation and feel that they do not need outside regulation as they almost regulate themselves via reputation.” Panellist (SME owner, Female, 35-54, South of England)

However, some panellists strongly rejected some of the arguments of the ‘expert witnesses’ that current arrangements are sufficient. With regards to **barristers**, some panellists were not convinced by the arguments that the current arrangements are sufficient to maintain ongoing competence. They believed that the argument for self-regulation based on professional pride was flawed: although many barristers might be competent and hold themselves to high standards, there is limited consistency in the training and development across the board, and room for poorer performing barristers to slip through the net. Some also felt that there was a degree of resistance to outside monitoring and oversight.

“Self-regulation does not work. Pride is not enough to regulate barristers. Again it comes across as indolence. They simply do not want there to be any oversight and he believes that everything is fine as it is. I disagree.” Panellist (Teacher, Female, 35-54, Midlands)



“I am sure that many barristers are highly conscientious and professional, but a framework is needed to ensure that this is checked and consistent amongst everyone (especially since many are self-employed - who is checking them?).”  
Panellist (Teacher, Female, 25-34, South of England)

When it came to **solicitors**, the panellists who disagreed with the views of the ‘expert witnesses’ thought that the lack of a formal structure for checking competence meant there was too much reliance on honesty, diligence and self-motivation to maintain competence. As with barristers, whilst most solicitors might be competent, panellists were not reassured that there were systems in place to catch those who were not.

They were further unsettled by the fact that the SRA takes action against around 400 solicitors per year out of a total of around 200,000. Panellists assumed that levels of insufficient competence would be higher than this (either based on their own experience or anecdotal evidence regarding poor performance from family and friends), and that – consequently – the SRA was not ‘catching’ solicitors with insufficient competence. Some also felt that offering compensation to clients where mistakes had been made was inadequate and akin to ‘closing the stable door after the horse has bolted’.

“The strong point that was made was that the vast proportion of solicitors are competent. That could be one conclusion from the fact only 400 are pulled up each year out of 200,000, but it might also be they are not looking hard enough.”  
Panellist (Retired chartered surveyor, Male, 55-74, Wales)

“Requiring professional indemnity cover to reimburse successful negligence claims is a ludicrous brag. What tiny proportion of incidents of poor service go all the way through the civil courts and lead to an award of damages? This is akin to bragging about a horse-catching service. Much better to just increase competence BEFORE any stable doors are incompetently left open.” Panellist (SME owner, Male, 25-34, South of England)

**Overall, the majority of panellists agreed that there was not enough reassurance that the measures currently in place were identifying and tackling cases of insufficient competence.** While they were prepared to believe that most lawyers are diligent, there were too many gaps and too little consistency, meaning insufficient competence could go undetected and unchallenged. Many also strongly felt that it was important for lawyers to stay up-to-date with changes in law and regulations (as was emphasised by the LSCP representative), and they did not have enough reassurance that this was happening consistently or to the right level.

“Can it honestly be said that all solicitors are actually doing what they say to the regulator? It raises a key question – who is the responsibility with: the solicitor or the regulator? And where should it be? Is it ok to rely on the honesty of the



individual to say they are doing it or should there be more control?" Panellist (Male, 35-54, South of England)

As a result, at this point in the deliberative forum (before their final deliberation with other panellists to reach a consensus), most panellists wanted to see:

- More rigorous checks by regulators on competence
  - Not just picking up issues of malpractice/ wrongdoing;
  - More oversight/ external verification, not just relying on self-regulation of ongoing competence.

"I have more confidence in the legal system but I still feel it needs more checks. I think the lawyers are very dedicated and self regulate as lots of them are self employed but they need an outside body doing checks on them." Panellist (SME owner, Female, 35-54, South of England)

- Greater consistency in standards and requirements.

"If anything, they reinforced my views that there are too many gaps and that too much is left to trust... There are some examples of great practice but it needs to be tied together and formalised so that all companies are following the same procedures." Panellist (Teacher, Female, 25-34, South of England)

### 3.4 Confidence in current competence arrangements in legal services

#### Summary of key findings

By the end of the deliberative forum, panellists were unanimous in the view that they did not have confidence in the current arrangements. Amongst the wider public, most people surveyed (64%) have at least some confidence in the measures currently in place to ensure the competence of lawyers throughout their careers. However, nearly half say this is partly (not completely) the case, and nearly a third of people say they do not have confidence in the current measures.

By the end of the four-week deliberative forum, panellists did not have sufficient confidence in the existing measures for lawyers to demonstrate their confidence through their careers. Some panellists' views changed over the course of the forum, and they were influenced by evidence they reviewed on what happens currently, areas where consumers face greater risks in law, and the views of people from within the industry.

When members of the public find out about the types of measures currently in place for assessing lawyers' ongoing competence, the quantitative research shows that the majority have some confidence in the current system (see Figure 5 below). However,



nearly half of members of the public (47%) say they only 'partly' have sufficient confidence. A further 31% of people say they do not have sufficient confidence in the current measures.

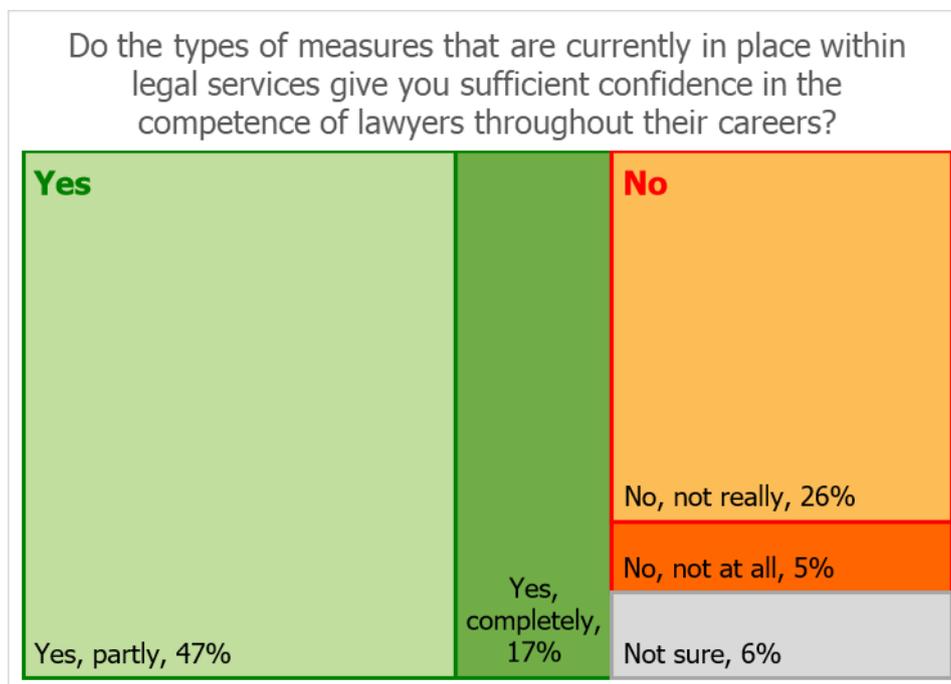


Figure 5: Q: Do the types of measures that are currently in place within legal services give you sufficient confidence in the competence of lawyers throughout their careers? (Base: Members of the public; n=1005, total sums to more than 100% due to rounding)

Respondents were asked – in their own words – why they said they do/ do not have sufficient confidence in the current arrangements. Amongst those who say 'yes' they have sufficient confidence<sup>6</sup>:

- 15% say they are happy that rules and checks are in place;
- 14% say that lawyers do stay up-to-date through existing training (and that it is in their interests to do so);
- 9% say the checks are thorough;
- 8% say the regulations give them peace-of-mind.

Amongst survey respondents who say they do not really/ not at all have sufficient confidence:

- 18% say there needs to be more consistency across the legal industry;
- 9% say there should be greater consistency with other professions;
- 9% say there are no/ too few (external) competence checks in place;
- 8% say they think self-regulation is not effective/ acceptable; and

<sup>6</sup> The figures quoted are for reasons where there are 8% or more of mentions amongst those who say the current measures give them sufficient confidence in the ongoing competence of lawyers.



- 8% say they have had bad personal experiences of lawyers or they do not trust lawyers.

There is a chart showing the proportion of people who give reasons for having/ not having confidence in the appendices at the end of this report (Figure 10).



## 4. Changing the current ongoing competence arrangements

### 4.1 The public's view on whether regulators should strengthen ongoing competence requirements for lawyers

#### Summary of key findings

The majority of people (both panellists and the wider public surveyed) believe that regulators should introduce more specific rules and requirements for lawyers to demonstrate ongoing competence.

By the end of the four-week deliberative process – having considered a large amount of information and heard from fellow panellists – all panellists were convinced that the current arrangements were not sufficient to give confidence and that regulators needed to introduce further requirements for all lawyers.

Amongst the wider population, the quantitative research shows that, while nearly two thirds of the public have some or complete confidence in the existing arrangements, there is majority public support for regulators to introduce more specific rules regarding the ongoing competence of lawyers. 79% of people say that regulators should introduce more specific rules and only 5% say they should not, as shown in Figure 6 below.

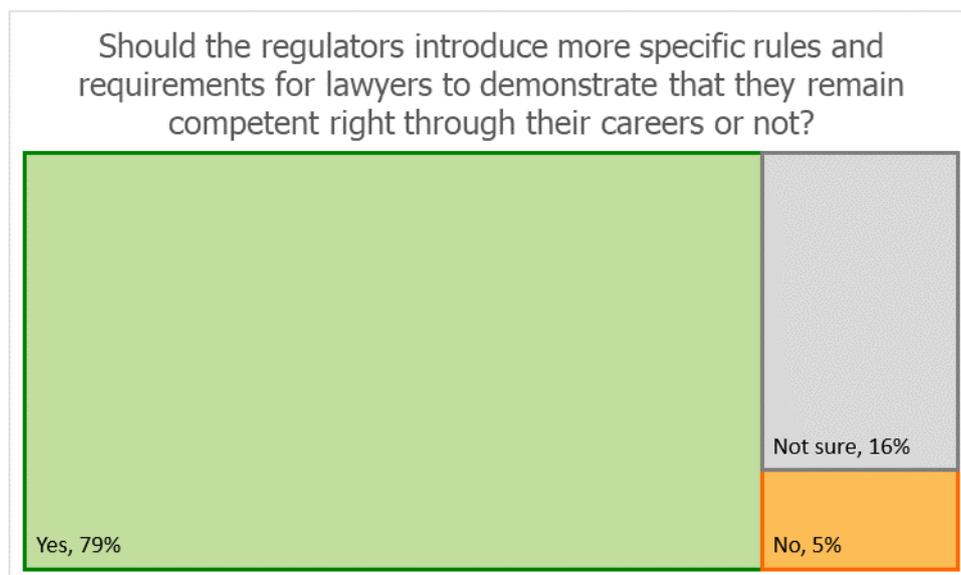


Figure 6: Q: Should the regulators introduce more specific rules and requirements for lawyers to demonstrate that they remain competent right through their careers or not? (Base: Members of the public; n=1005)



## 4.2 Reasons for and against changing the current arrangements

### Summary of key findings

People want to see greater consistency in requirements. In the deliberative forum, panellists said that the current – mostly voluntary – arrangements are not sufficient for picking up lawyers with insufficient competence. Amongst the wider public, there is greater support for the reasons *for* changing the current arrangements than for the reasons *against* change. While only a minority of people support no change, the argument that lawyers trade on their reputation has some resonance as a reason for trusting lawyers to maintain competence without further regulatory scrutiny. There is also some resistance to further regulation on the basis that it will introduce ineffectual ‘tick-box’ exercises. Ultimately, however, the limited evidence – either of widespread incompetence or lack of competence or that lawyers are maintaining their competence – reinforced the view that further checks are needed.

### Reasons for changing the current arrangements

The deliberative panel were unanimous in deciding that regulators should tighten the requirements for lawyers to demonstrate ongoing competence. Their reasoning for advocating change to the existing arrangements was as follows:

- It is hard for the public to gauge competence;
- There is some evidence of poor practice and insufficient competence:
  - Anecdotally or through their own experience;
  - Based on information they received about evidence of poor practice in some areas (e.g. conveyancing and advocacy);
  - And they suspect this is more widespread than what regulators are picking up currently;
- There are few mandatory requirements to maintain competence across the legal profession;
- There is little consistency between the many legal services regulators;
  - And little consistency with what happens in other professions, such as medicine, nursing and teaching;
- Lawyers’ careers can be long, but regulators do not currently conduct regular checks on competence beyond qualification, in contrast to what people assume.

“The law industry is fairly opaque. What the public knows and can easily see about the law is quite low, it’s hard to see in, so that doesn’t necessarily inspire confidence.” Panellists, Final deliberative session



“All five of us have personally encountered one or more incompetent lawyers and that didn’t make us collectively feel reassured.” Panellists, Final deliberative session

“I’ve used a couple of lawyers. I never had any means of assessing whether they were going to be competent or not. I mean, I didn’t realise that ongoing competency checking wasn’t a thing. I’ve been really shocked by all this information.” Panellists, Final deliberative session

In the quantitative survey, respondents were presented with potential reasons for changing the current arrangements, and asked to what extent they agreed/ disagreed with the reasons. Figure 7 below shows that, amongst the wider public, there is strong agreement with the following statements as reasons for changing the current arrangements:

- ‘There should be more consistency in competence requirements across the legal profession, as there is for other regulated professionals (such as doctors, accountants, teachers and airline pilots)’: 88% of members of the public agree; 45% of whom agree strongly;
- ‘The regulators should do more to reduce the risk of a lack of competence undermining public trust in the legal system’: 87% agree, 39% of whom agree strongly;
- ‘Consumers currently assume that all lawyers are competent and that more robust checks are in place’: 84% agree, of whom 34% agree strongly.

There is less certainty over whether ‘some evidence of a lack of competence in areas of law like conveyancing and representing people accused of a crime in court (advocacy)’ is a good reason for changing the rules. A fifth of survey respondents say they are unsure about this as a reason for changing the requirements. However, 72% still agree with this argument.



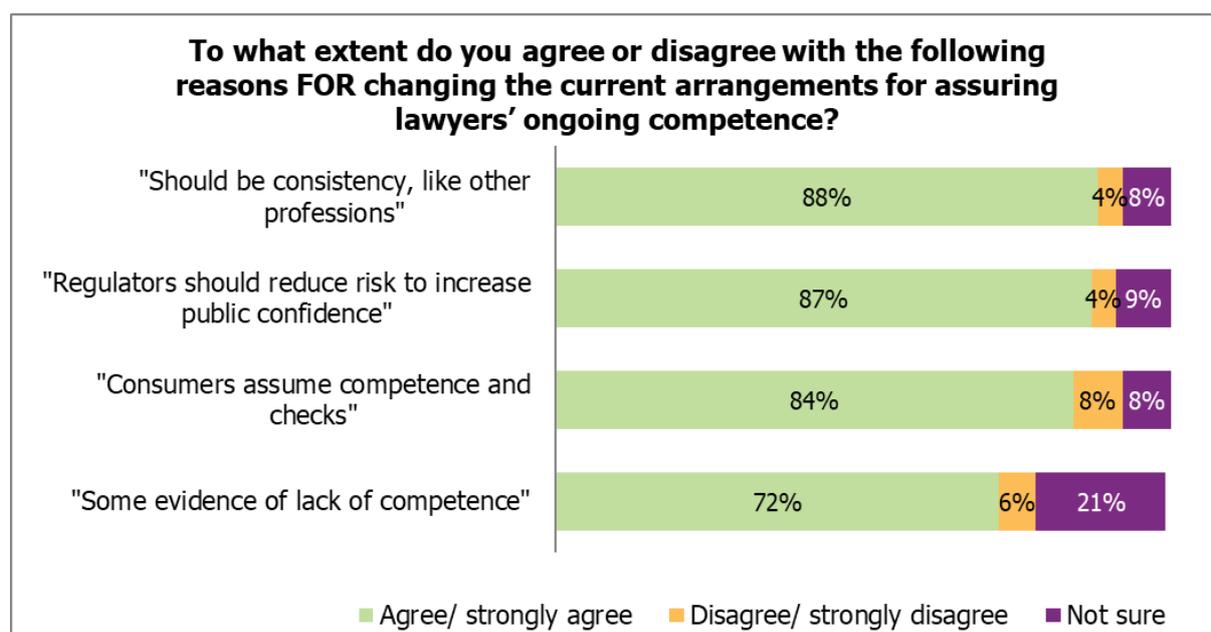


Figure 7: Q: To what extent do you agree or disagree with the following reasons FOR changing the current arrangements for assuring lawyers' ongoing competence? (Base: Members of the public; n=1005, totals may not sum to 100% due to rounding)

At the very end of the survey, respondents gave reasons (in their own words) for supporting or not supporting change to the existing rules. Amongst the majority (79%) who believed that regulators should introduce more specific rules for lawyers to demonstrate ongoing competence, the most frequent reasons were:

- Lawyers should face competence checks (because, for example, they have responsibility for clients in high stakes situations) (16%);
- To increase public trust and confidence in lawyers (15%);
- To ensure lawyers stay up-to-date (15%);
- To maintain high standards (12%);
- Because it is necessary/ important (11%);
- To be consistent with regulation of other professions (10%).

### Reasons against changing the current arrangements

Panellists were prompted to consider some of the potential drawbacks of introducing stricter measures, such as the burden on lawyers and increased costs. However, most thought the benefits of firmer requirements would outweigh the disadvantages, as they would end up with higher quality services. Panellists also thought that – although new requirements might take time to get used to – they would be absorbed into standard practice over time.

"This will take time to incorporate into working practice, but over time I do think this would just become a 'new normal', and something they would be familiar with evidencing... Additional work for lawyers will mean additional costs, this could impact clients. As a client, I'd rather pay to receive reassurance of good



practice than going in blind and receiving poor practice.” Panellist (Female, 25-34, Wales)

A small minority of panellists were more hesitant to advocate change, primarily because they worried that further arrangements would pose a disproportionate burden on lawyers. However, by the end of the four-week process, they too were convinced that change was needed.

Amongst the wider public, there is only minority support for no change to the existing requirements: 5% of survey respondents support no change.

All survey respondents were asked for their response to four potential reasons for not changing the existing arrangements (see Figure 8 below). As might have been expected (given that most wanted the system to change), there is lower support overall for the arguments against change than there is for arguments for change. To expand:

- There is most agreement that ‘lawyers trade on their good reputations, so it is already in their interests to maintain their competence’ is a reason for not changing the current arrangements: 61% agree
- ‘Meeting new competence requirements by regulators could become a tick box exercise, rather than genuinely maintaining competence’ is a reason for not introducing further regulation: 55% agree
- ‘More rules and requirements could increase prices for customers’ is a reason for not changing the current arrangements: 55% agree;
- People are split on whether ‘there is no evidence of widespread poor competence’ is a reason not to change the existing arrangements: 37% agree and 36% disagree.



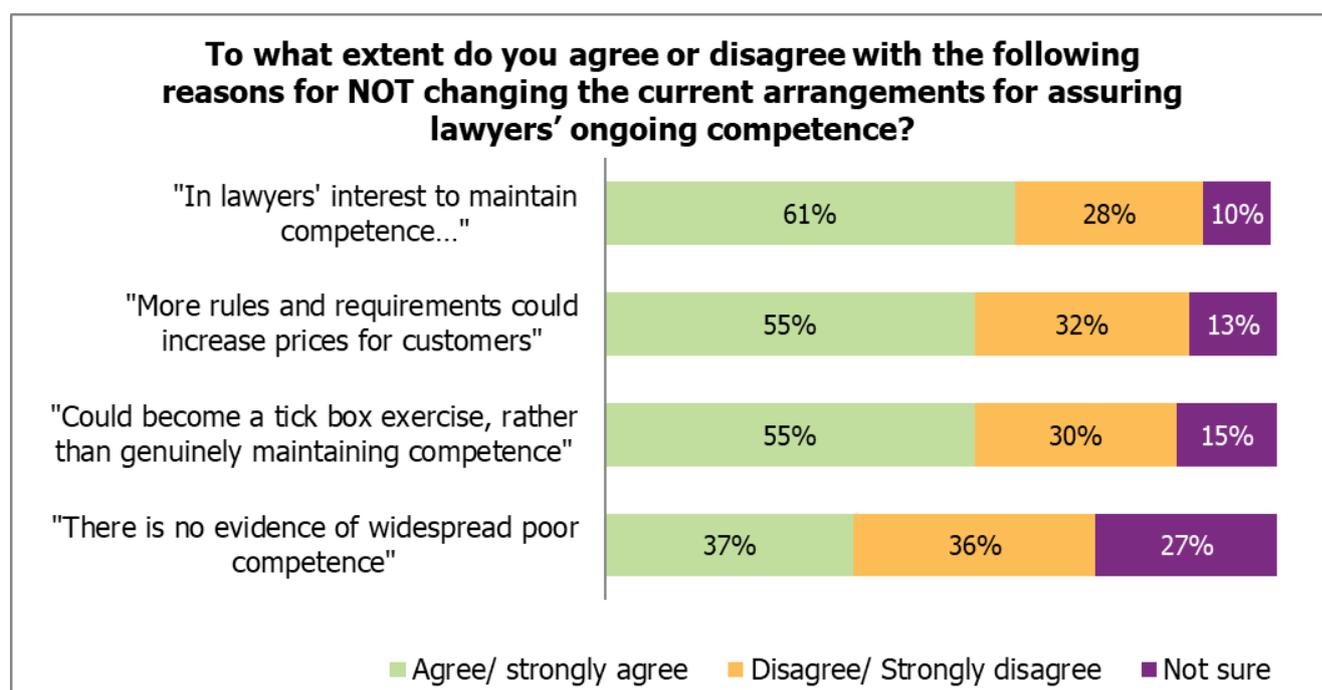


Figure 8: Q: To what extent do you agree or disagree with the following reasons for NOT changing the current arrangements for assuring lawyers' ongoing competence? (Base: Members of the public; n=1005, totals may not sum to 100% due to rounding)

## Impact of availability of evidence of competence amongst lawyers

As explained in [Section 2.3](#), there are few identified, objective sources of data about competence available currently.

Lack of certainty in the evidence was a theme in the deliberative forum. Some panellists found it hard to decide whether there was a case for changing the current arrangements. In spite of all the evidence they considered, they felt that they had not seen much on how prevalent an issue insufficient competence is in the legal sector, what the impacts of system pressures were, and whether other systems could play more of a role than those imposed by regulators.

"I'd want to see what the scale of the issue for the effort now being demanded - what risk is being mitigated by such a system, what value is it generating for the public? Is there any sense of duplication of protection that's already offered elsewhere? ...We have no idea of the magnitude of the problem and therefore I can't judge an appropriate level of 'policing' - is it going to be a sledgehammer to crack a nut?" Panellist (Chartered engineer, Male, 55-74, North of England)

This uncertainty is also reflected amongst the wider population. Over a quarter of respondents (27%) say they do not know whether 'no evidence of widespread poor competence' is a reason for not changing the current arrangements. This echoes the lack of certainty on whether 'some evidence of lack of competence' is a reason for changing the current arrangements, suggesting that a notable proportion of the public is not confident there is sufficient evidence either way. The limited evidence – either



of widespread incompetence, lack of competence or that lawyers are maintaining their competence – reinforced the panellists' view that further checks are needed. The wider public also wanted to see further checks.

### 4.3 Expectations of regulators in assessing ongoing competence

#### **Summary of key findings**

The public supports more regulatory protection, rather than less, even if this means a greater burden on lawyers and more costs passed onto consumers. Panellists felt that others (such as employers) have some role to play in maintaining and checking lawyers' competence. However, they believed that, ultimately, it is the role of the regulator to seek assurance that this is happening, and they do not believe that the current arrangements can provide sufficient evidence that lawyers remain competent.

As previously stated, all 23 panellists (and nearly eight in ten members of the wider public) thought that legal services regulators should introduce more specific rules and requirements for lawyers to demonstrate ongoing competence. Here we look in more detail at what the public expects of legal services regulators.

Panellists were strongly in favour of greater levels of regulatory protection, even though this might place greater burdens on lawyers and mean higher costs for customers. Panellists were also more likely to believe regulators should have a greater focus on areas of law with vulnerable clients than on maintaining the same checks for all lawyers (although they did not consider the detail of what mix of measures should apply in these circumstances). This is perhaps because, in contrast to the survey respondents, they considered and discussed in more detail the increased risks in some areas of law for people in vulnerable situations. The 'evidence' panellists considered on risks of severe consequences in some areas of law (especially for people in vulnerable circumstances) influenced panellists' opinions. Some changed their minds from thinking that requirements should be the same for all lawyers to thinking that there should be more rigorous requirements for those whose work involves vulnerable people. They felt that – as the regulators' role is public interest – those with the greatest responsibility should face the greatest scrutiny.

“[The most important thing for regulators to bear in mind when they are considering the ongoing competence of lawyers is] that the areas of law that carry the most responsibility are the heaviest regulated” Panellist (SME owner, Female, 35-54, South of England)

“I think [regulators] have to make it their priority that the public is protected.” Panellist (Dentist, Female, 35-54, Midlands)



The panellists discussed whether others (not just regulators) should have a role in ensuring lawyers maintain their competence throughout their careers. Some felt it was important to consider the role of employers too, for example, by having robust appraisal, personal development and supervision programmes in place. They felt it was in the interests of employers to keep employees competent to deliver a good service, stay competitive and avoid being sued.

Ultimately, however, panellists believed that regulators should have assurance in the competence of those they regulate, and that lawyers should provide regulators with more evidence in order to give that assurance. They did not believe that the current systems enable regulators to have all the evidence they need to provide that assurance.

In the survey, members of the public were asked for their views on where the balance should lie in the following regulatory trade-offs:

- Fewer specific rules and requirements for practising as a lawyer, so less burden on lawyers and fewer costs passed on to the customer **vs.** more specific rules and requirements for practising as a lawyer, so greater burden on lawyers and more costs passed on to the customer;
- Competence checks are stricter for lawyers who work in areas of law where the consequences of getting it wrong are more severe **vs.** competence checks are the same for all lawyers (whichever areas of law they work in);
- Competence checks are stricter for lawyers who work in areas of law where the people involved are more vulnerable (e.g. children, asylum seekers and refugees, people with learning disabilities) **vs.** competence checks are the same for all lawyers (whichever areas of law they work in).

Figure 9 below shows that there is a clearer preference in the trade-off between fewer rules (and less burden on lawyers and less costs for customers) and more rules (and more burden on lawyers and costs for customers): 56% of people think the balance should tip towards more rules, and only 16% think the balance should lie closer towards fewer rules.

However, notably, 28% of people pick a middle position for this trade-off (in contrast to the other trade-offs, where only 15-16% of people pick the midpoint). This suggests that many people find it hard to pick a position, either because they are uncertain based on what they know, or because of the complexity of the matter.



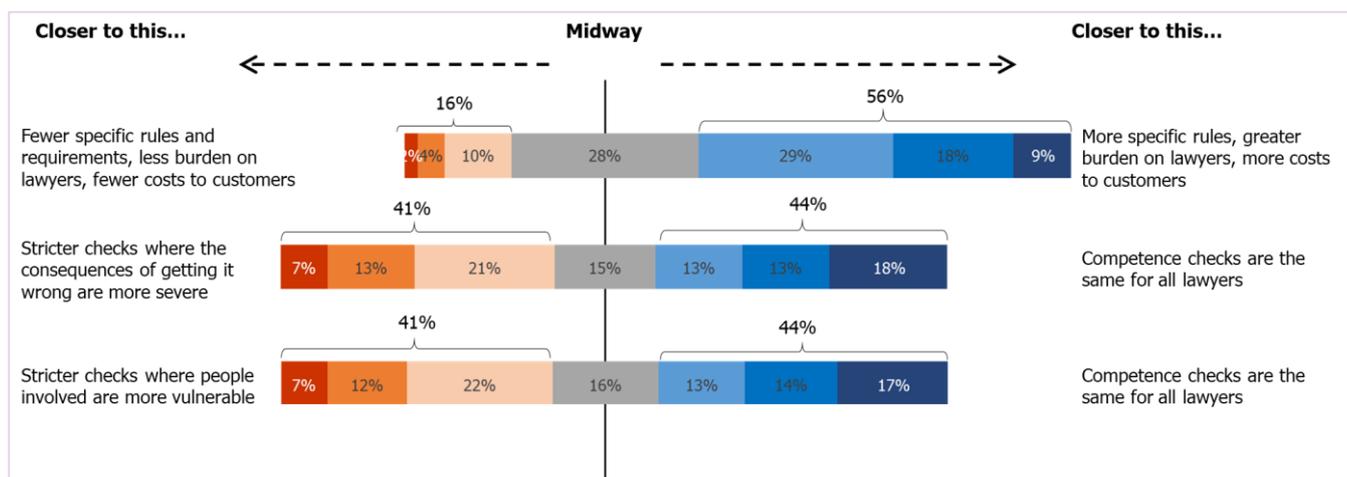


Figure 9: Q: Thinking about regulation of legal services, in theory, where do you think the balance should lie in the following trade-offs? (Base: Members of the public; n=1005, totals may not sum to 100% due to rounding)

The public’s response to the remaining two the trade-offs is pretty evenly split between the two positions. However, there are some variations in the strength of feeling towards the positions regulators could take:

- With regards to whether checks should be stricter where the people involved are more vulnerable, 41% lean towards stricter rules in these areas of law and 44% lean towards having the same competence checks for all lawyers
- With regards to whether checks should be stricter where the consequences are potentially more severe, 41% lean towards stricter rules in these circumstances and 44% lean towards the same rules for all lawyers.

With regards to competence checks for lawyers working with more vulnerable clients, there was a difference between panellists and the wider public. Panellists were more supportive of stricter rules for lawyers working with potentially vulnerable clients, possibly because they watched a video describing some of the greater risks for some groups of people and/ or in some areas of law.



## 4.4 Guiding principles for ensuring ongoing competence in legal services

### Summary of key findings

In general, the public wants to see greater consistency in requirements. Panellists wanted mandatory requirements and regular checks. They felt that – as well as a core set of baseline requirements for all lawyers – competence requirements should be tailored to reflect the diversity of the profession and the risks posed to people using legal services. However, panellists stressed the importance of a proportionate response that strikes a balance between effectiveness and limiting the burden on lawyers.

Three weeks into considering the issue of ongoing competence in legal services in the deliberative forum, the following key principles emerged in panellists' views of what should happen:

- Consistent minimum requirements across all lawyers;
- Supplemented by a tailored approach based on area of law, level of consumer risk, and seniority;
- Mandatory requirements to demonstrate ongoing competence;
- Regular checks by regulators that lawyers are complying with requirements;
- A focus on lawyers staying up-to-date with changing law;
- A focus on customer experience;
- A proportionate response.

These guiding principles are each discussed in greater detail below. The principles informed the panellists' recommendation that regulators should consider introducing some specific ongoing competence measures that are set out at [Section 4.6](#).

### Consistency across all lawyers

Panellists noted that – in other professions – there tends to be a common set of standards and a single approach that applies across the profession, even where there is substantial diversity in their roles (such as with doctors). They found the lack of consistency in law worrying, especially as it makes it hard for consumers to know what to expect and to compare lawyers. Greater consistency (as in other professions) is the most compelling reason for change amongst survey respondents: nearly nine in ten members of the public in the survey agree that this is a reason for changing the existing arrangements.

Panellists wanted to see a core baseline of common requirements across all lawyers. They thought that there should be:



- **Common standards and content:** panellists believed that there are core areas of knowledge, skills, values and attributes that all lawyers should foster and demonstrate, regardless of their area of law or level;
  - Panellists were keen to emphasise the importance of client care and communication as an example here (discussed further [below](#)).
- **A common process:** panellists felt that all lawyers should follow the same core process to maintain and demonstrate their competence.

## A tailored approach

Although they wanted to see consistency, panellists acknowledged that it would be hard (and undesirable) to fully standardise all requirements because of diversity in types of lawyers, areas of law, and levels of risk that clients and consumers face in using legal services.

Consequently, panellists thought that – beyond a core baseline approach and core standards – competence requirements should be tailored to:

- Different areas of law, particularly in terms of the knowledge lawyers need to demonstrate, but also in terms of their skills (recognising the different skills needed, for example, for advocates compared with notaries).
- Seniority/ experience/ responsibility: some expected checks to be different depending on level of experience and responsibility.

“I don’t think competence checks could realistically be the same for everyone. For example, you wouldn’t expect conveyancing solicitor to be fully competent and trained in criminal law or family law. There are some base checks that should be standard throughout, in my opinion, with regards to professionalism, delivering good service on time and not charging more than is reasonable... Someone who deals with documentation and property will be regulated and observed differently in their jobs to someone who deals with children and vulnerable members of the public.” Panellist (Dentist, Female, 35-54, Midlands)

There was also much discussion amongst panellists on whether there should be extra rules and checks in areas where consumers face higher risks (either because of some evidence of more poor practice (e.g. advocacy, conveyancing), because of the risk of severe consequences (e.g. loss of liberty; refusal of asylum), or because there are typically more vulnerable people involved.

Some panellists believed that, in these circumstances, the standards of competence should be higher and/ or that there should be more competence checks.

“I still feel strongly about my views that checks should be linked to consequences and responsibility.” Panellist (SME owner, Female, 35-54, South of England)

However, other panellists preferred that effort was spent in *responding* to cases of insufficient competence that have been uncovered in routine competence checks,



instead of imposing more rigorous rules and checks for areas that pose higher risk to consumers.

“I think I'm coming down on the opinion that I would in reality support higher levels of regulation in certain areas, with the key caveats that: no areas of law should be left weakly regulated. And, it would be preferable for me to see individual failing practitioners targeted for higher competence interventions, than whole high-risk areas as a proxy for targeting incompetent individuals.” Panellist (SME owner, Male, 25-34, South of England)

### Mandatory requirements

Panellists wanted the core competence requirements to be mandatory because voluntary measures or self-regulation would mean that some lawyers would choose not to take them up, which goes against the desire for consistency across all lawyers. They also assumed that lawyers with insufficient competence were more likely to avoid voluntary competence measures, making them less effective at maintaining competence within the profession (and providing the public with confidence in this).

“Anything not mandatory is not very reassuring to us.” Panellists, Final deliberative session

### Regular checks by regulators

On a similar theme, panellists felt that competence measures would have little efficacy without regulators checking that lawyers were complying with the requirements.

### A focus on lawyers staying up-to-date

As explained [earlier in the report](#), panellists assumed that it would be very important for lawyers to stay up-to-date with the latest law and regulations. They were surprised that there were not formal processes in place to ensure this. As a result, they wanted any future requirements to prioritise up-to-date knowledge.

### A focus on customer experience

Some of the themes that arose frequently in the deliberative forum related to customers' experiences of using lawyers. In particular, panellists discussed the importance of clear communication (with laypeople) and managing expectations (about fees and process). Several panellists commented that – in their experience – lawyers frequently lacked these skills. As a result, they wanted to see competence requirements regarding the customer experience.

“Legal services are SERVICES and what's best for users ought really to be the overriding priority.” Panellist (SME owner, Male, 25-34, South of England)

“Lack of clarity is a major factor and it seems that a lot of legal professionals, certainly in my experience, find it difficult to lay information bare specifically for



lay people... That is why and I stand by this point, that customer review and client experience is crucial in identifying strengths and weaknesses in competence of a legal professional.” Panellist (Female, 18-24, North of England)

## A proportionate approach

Some panellists were keen to stress that regulators should strive for proportionality, in terms of striking the balance both:

- Between overly burdensome and sufficiently robust requirements; and
- Between being meaningful (but not onerous) and light-touch (but not ‘tick-box’).

For some, it was hard to gauge what level would be appropriate – they were not clear on the current level of insufficient competence or the harm it was causing.

“Proportionality: the means must justify the ends and the ends must be informed by the data... So the data will drive the amount of effort - what are the issues? what do we want to reduce the risk score to? ...and the amount of effort required to reach that target will dictate the size and complexity of the system... For lawyers, the key to getting buy-in will be to pitch the framework at the right level of depth/ breadth/ frequency – perversely, making it too ‘light touch’, too ‘box ticking’ might make more lawyers resent it than making it too stringent where few will hate it more deeply.” Panellist (Chartered engineer, Male, 55-74, North of England)

The hope was that measures would create little difficulty for ‘good’ lawyers, but pick up lawyers lacking competence.

“I expect this would have a disproportionately negative impact on incompetent lawyers, and a marginal impact on already good lawyers.” Panellist (Teacher, Female, 35-54, Midlands)

## 4.5 Further considerations in changing current competence requirements

### Summary of key findings

Panellists wanted regulators to be mindful of potential costs to customers and the need to persuade lawyers of the benefits of changes to the requirements. They also welcomed the potential for consistent competence requirements to help consumers compare and choose lawyers.

In the deliberative forum, panellists came up with some further considerations for regulators to bear in mind when they tighten up the requirements. These included:



## Costs of implementation

Some panellists worried that tighter regulation would be costly for regulators and firms to implement, which would ultimately end up costing clients more. However, others felt that this was money well-spent (if they could have more confidence in lawyers' competence).

"Given that this process has a financial cost to set up and to manage, who will pay for this? Legal advice is already expensive and the client is likely to foot the bill. Will this discourage people?" Panellist (Male, 35-54, South of England)

"As was suggested it is all about balance but I'm erring towards more regulation even if costs are increased because then it would give the public more confidence their money is well spent." Panellist (Male, 75+, Midlands)

## Engaging with lawyers

Several panellists believed that lawyers were likely to be resistant to change, and this view was reinforced by some of the views they heard from people working in the sector in the 'expert witness' videos. They felt that regulators might face resistance in particular from lawyers who have been practising for a long time and from barristers (based on the impression that they felt their 'self-policing' approach worked to maintain competence).

"It may be difficult for those with extremely long careers who have never been subject to regulation to accept these changes but, again, that supports the case for making them." Panellist (Female, 35-54, South of England)

As a result, panellists thought it was important to promote the benefits to lawyers of introducing stricter competence requirements, namely that they:

- Are an opportunity for professional development;
- Should weed out poor performers who may affect the reputation of the sector;
- Offer firms an opportunity to promote their high standards, thereby driving competitiveness.

"Keep lawyers engaged, and the idea is that it's there to help lawyers. It isn't a stick to beat them with, it's for their benefit as much as for the public's benefit." Panellists, final deliberative session

"I think the key is that the lawyers have to feel that this is something that's a positive move, that is ultimately to help them become better lawyers, and to give the profession better people within it." Panellists, final deliberative session

Panellists also thought that regulators need to engage with lawyers, work with them to come up with measures that will strike a balance between providing accurate assurance and benefiting lawyers (or at least ensuring minimum extra burden). They



also thought that working with lawyers in determining new measures should enable regulators to build upon the good practices already in place.

### Competence checks to help customers assess and choose lawyers

Some panellists felt that the lack of consistent competence requirements currently made it harder for members of the public to choose lawyers. They felt that potential competence measures could have the added benefit of helping consumers to compare and choose lawyers to meet their needs.

“It would appear the levels of competence and the level of checking/ improving/ verifying this competence is not satisfactory. This is quite worrying. If the legal profession can't or hasn't been able to address these issues, how can the general public select competent legal advice?” Panellist (Retired chartered surveyor, Male, 55-74, Wales)

## 4.6 What mix of measures?

### Summary of key findings

Panellists considered six different potential measures that regulators could introduce to ensure ongoing competence: a standard competence framework for all lawyers, mandatory CPD, revalidation, spot checks, remediation, and feedback. Panellists felt each approach had both benefits and drawbacks in theory. Although they did not consider in detail how such measures would be implemented (and the potential impacts of implementation, such as costs and time spent by practitioners), they gave an indication of the types of measures that would give them – as members of the public – sufficient confidence in the ongoing competence of lawyers. In the final deliberation session, the panellists concluded that a suite of measures would be the most effective way of maintaining ongoing competence. They recommended a consistent framework across all lawyers supplemented by a baseline of CPD (to keep lawyers up-to-date), linking recertification to competence, and regular checks by regulators (random spot checks and/ or verification of CPD compliance).

In the deliberative forum, panellists considered six potential measures that could be introduced by regulators in legal services<sup>7</sup>:

- A standard competence framework for all lawyers
- Mandatory CPD requirements
- Feedback

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<sup>7</sup> Note: these measures were not covered in the quantitative survey. The feedback on them is therefore qualitative in nature and comes from in-depth consideration by the 23 panellists only.



- Spot checks
- Remediation
- Revalidation

For each option, they were presented with an explanation of the measure, how it might be introduced, and some potential benefits and drawbacks to introducing it in legal services. Generally, panellists felt that the different measures would play different roles in assuring regulators and the public of ongoing competence. In reviewing the measures, they commented that:

- Some describe the expected standards of competence;
- Some contribute to and build a lawyer's competence;
- Some are interventions that enable regulators to assess competence and identify insufficient competence;
- Some are measures to address insufficient competence and bring lawyers back up to the minimum expected standards;
- Some could also act as indicators of competence that consumers could use to help them choose lawyers.

Participants commented on each measure separately and then ranked the measures in order of those that, as a standalone measure, gave them greatest confidence that lawyers will remain competent throughout their careers to those that gave them least confidence. The measures, in order of average ranking from those that, individually, gave greatest confidence to those that gave least confidence were:

1. A standard competence framework for all lawyers
2. Mandatory CPD requirements
3. Revalidation
4. Spot checks
5. Remediation
6. Feedback

Panellists then deliberated as a group on the different measures together. They believed that a suite of measures was likely to be the most effective way of ensuring ongoing competence. In their final deliberation session, they recommended a mix of measures including:

- A single consistent **competence framework**
  - Ideally this would be a matrix that reflected both different areas of law and different levels of seniority/ responsibility;
- A baseline of **mandatory CPD requirements**
  - Panellists ideally wanted this to include an assessed element (not just 'attendance only' – needs to test knowledge and skills);
  - They recommended looking to existing accreditation schemes for inspiration;
- **Recertification linked to competence**



- Demonstrated through a range of narrative and numeric/ objective measures, including a portfolio with case reviews, client feedback, and CPD records;
- Looking to the revalidation approaches used in the health professions for inspiration;
- A process of **regulator checks**/ audit or spot checks
  - Regular checks of all lawyers to verify compliance with CPD; and/ or
  - 'Deep-dive' style checks either at random (e.g. x% of lawyers checked) or where they identify an issue with an area of law, firm or individual.

In earlier discussions, panellists had also said they felt there was some place for remediation and feedback, particularly as tools for performance management and professional development. However, these measures were seen as supplementing what they saw as the core mix of measures set out above, for the following reasons:

- With regards to **remediation**, panellists liked the positive supportive approach to maintaining competence, and that it could pick up issues early and potentially prevent more serious competence issues. However, they felt that remediation was dependent on an effective annual appraisal or monitoring system, with a reporting mechanism to a regulator;
- They felt that **feedback** should potentially play some role in the overall approach to ongoing competence and may be useful in assessing soft skills and client experience or to support recertification. However, they felt that feedback has less use in ensuring and assessing competence if used in isolation.

It was important to panellists that the measures chosen are *effective* in practice, both in maintaining lawyers' competence and in verifying that they meet competence requirements. They expected regulators to research approaches that work elsewhere and work with lawyers to come up with measures that do in fact maintain competence across the profession and identify insufficient competence.

Panellists' detailed feedback on each of the measures is included in the appendices at the end of this report.



## 5. Conclusions

While most members of the public have some confidence in the current ongoing competence arrangements for lawyers, the majority also think that legal services regulators should bring in further competence requirements.

Support for further regulation is driven by:

- A belief that regulated professionals should have to demonstrate their competence throughout their careers;
- A belief that it is important for lawyers to stay up-to-date given the impact they can have on people's lives and that laws are constantly changing;
- Concern that not all lawyers are competent, based either on personal experience, or on the evidence considered in the research;
- Concern that not all lawyers face scrutiny of their competence from, for example, employers or judges, and that members of the public are not able to judge competence;
- Worry about the impact of poor competence on people who use legal services, particularly given the high cost of those services, potential harm to those who are more vulnerable, and the potentially severe consequences;
- Concern that there are gaps in the existing systems due to variation between regulators and the lack of regular mandatory competence checks. As a result, there is not enough reassurance that the measures currently in place are effective in identifying and tackling cases of insufficient competence.

The public wants to see greater consistency across the legal services regulators in both standards and approach. They also want to see more mechanisms in place to detect and address insufficient competence.

In the measures they introduce, panellists wanted regulators to find a balance between systems that are *effective* in picking up insufficient competence and those that are *not overly burdensome* on lawyers (particularly 'good' lawyers).

They suggest a mix of measures that:

- Builds on the good practice that already exists (for example, in some law firms, via accreditation schemes, the training for barristers);
- Involves documenting and reporting competence to regulators;
- Links demonstration of competence to recertification.

Ultimately, the public wants reassurance that regulators are ensuring a baseline of competence for all lawyers throughout their careers so that – if they need a lawyer – they can have faith that any regulated lawyer they choose will do a good job for them.



## 6. Appendices

### 6.1 Survey respondents' reasons for confidence/ lack of confidence in current competence arrangements: further detail

As discussed in [Section 3.4](#), the detailed breakdown of survey respondents' reasons for having confidence/ not having confidence in the current ongoing competence arrangements (in their own words) is as follows:

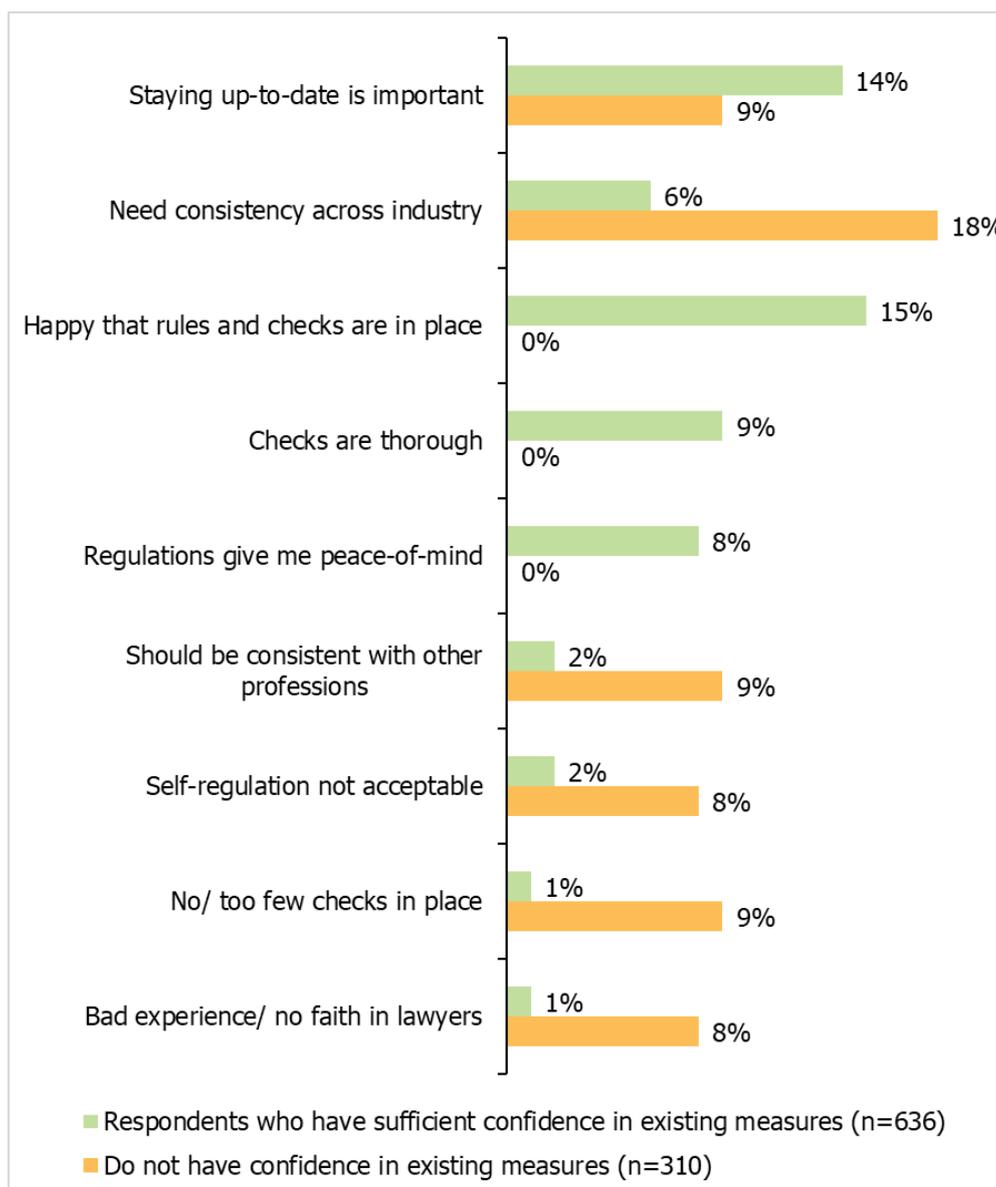


Figure 10: Q: Why do you say that the types of measures that are currently in place within legal services do/ do not give you sufficient confidence in the competence of lawyers throughout their careers? (Bases as stated)



## 6.2 Detailed response to ongoing competence measures

Panellists considered six competence measures in turn, and whether they could play a role in ensuring the ongoing competence of lawyers. Their response to each of the six measures is discussed below. The measures are ordered from the most to least popular (based on the ranking exercise panellists completed after they reviewed the measures individually. This is described in the main body of the report in [Section 4.6](#)).

### A standard competence framework for all lawyers

Amongst panellists, there was strong support for implementing a single consistent competence framework across all lawyers. They cited some of the following reasons for their support:

- Sets clear minimum standards for competence;
- Provides an effective way of identifying issues with competence;
- Familiar to many through workplace performance frameworks linked to appraisal;
- Could bring transparency to lawyers' competence, and potentially enable members of the public to compare law firms on consistent measures;
- Could include a common baseline of competence requirements, particularly those relating to communication and client care...
  - ...And could be adapted to different areas of law and levels of seniority/responsibility;
- Could be used to motivate lawyers, not just used as 'a stick to beat them with'.

"I think [a competence matrix is] good as well, because it actually motivates people, as opposed to just they feel like they're being checked and it's quite a negative process. It actually gives them something to work towards, and you know, that happens in the teaching profession where you can move up the pay scale. But also, it's combined a way of checking performance but also motivating performance and encouraging promotions, so I think it could work both ways."  
Panellist, final deliberative session

However, there were some questions and concerns over introducing a single competence framework for lawyers, and for a minority, these were strong enough reasons to discount a competence framework in favour of other measures. The main drawbacks mentioned by panellists included:

- Difficulty in creating a single consistent framework for such a diverse profession. Some worried that the framework would be so standardised/generalised as to be irrelevant or ineffective at truly setting standards of competence.
  - Alternatively, could be too long-winded and complex to be effectively implemented if it covered off all areas of law;



“With a competency framework it feels too 'standardised'... [which] raises a concern to how relevant it would be across the board. So it depends on whether there would be separate, tailored, area-specific sub-frameworks to drill down to be a measurable, relevant set of guidelines or whether it would be seen as an overarching more generalised set of standards, in which case I'm not sure on how effective that would actually be as a competency checker.” Panellist (Female, 18-24, North of England)

- Hard to strike the right balance between a robust enough framework and one that is not disproportionately burdensome on lawyers;
- Reinvents the wheel – competence frameworks exist, so the focus should be on properly implementing these (making them mandatory; linking them to appraisal);

“I quite strongly disagree with the idea of reinventing a new legal framework... Creating a new top-down framework is interfering and duplication of work already done by local experts in their niche fields... To me, rather than creating new frameworks the existing frameworks should be used regularly to assess the professional competence. So the only change that is needed is to actually ENFORCE the USE of the existing frameworks.” Panellist (SME owner, Male, 25-34, South of England)

- A competence framework has little effect unless professionals have to provide evidence of meeting the requirements, and this evidence is checked (e.g. through revalidation);

“I understand the minimum standards of competence that should be in place but how do they know that lawyers are updating themselves? ...this sounds just like a paper-pushing exercise. Nurses have 10 core competencies and these are evidenced and checked through revalidation. I don't think this has much impact on the legal sector... [if there is] no one checking if any lawyers continue to meet the standards.” Panellist (Nurse, Female, 35-54, North of England)

- Could be used simply to weed out insufficient competence, rather than focusing on development and improvement;
  - Although others argue that a competence framework can be used to guide development.

“The problem with the framework... is that it's a 'catch the problem after it happened' approach, instead of a proactive 'train people to have the skills they need' approach. Catching people out at an annual appraisal, potentially means they are acting incompetently for 11 months in the run up to their appraisal.” Panellist (SME owner, Male, 25-34, South of England)

Panellists also referenced the amount of time it would take to implement a new system, which might cause resentment amongst lawyers and increased costs to



customers (both of which were mentioned in the materials panellists viewed explaining the new ideas and their drawbacks).

However, many felt that the new system would soon become the 'new normal', and that costs would be offset either by lower insurance premiums or by improved quality of service.

### Mandatory Continuing Professional Development (CPD) requirements

CPD appealed in theory because panellists believed that, because the law is constantly evolving, it was very important to them that lawyers remain up-to-date. This was one of their main concerns when they found out that, although lawyers are required to carry out some CPD, the regulators do not always check what they do.

"I was quite shocked to read that CPD is compulsory, but that the actual courses undertaken are not checked. This leads me to wonder whether or not a lawyer could just undertake a really basic course (e.g. sitting in their chair properly at work!) and successfully fulfil the CPD requirements for the year!" Panellist (Teacher, Female, 25-34, South of England)

"I was pleased to see that there is some CPD already in place but concerned that it's not regularised. I think surely it needs to be mandatory with at least minimum standards in all aspects of the profession." Panellist (Male, 75+, Midlands)

Many panellists talked about their own experiences of completing CPD as part of their work or to maintain their qualifications. It was a familiar concept, and for some of them, part of a re-certification process that allowed them to continue practising. They welcomed the idea that this principle – checks on CPD completion – should be introduced into the legal sector.

"I have undertaken a nutritional qualification and I need to re-certify every 2 years to keep my qualification up to date and ensure I keep up my knowledge base. It is the same with my other professional qualifications. I'd like to think that as we learn more, standards change and we have to continually re-assess our knowledge." Panellist (Female, 35-54, South of England)

Most panellists believed that mandatory CPD requirements and routine checks on CPD completion should apply to all lawyers (albeit with tailoring to different areas of law). They felt this measure would give people greater confidence in lawyers' competence, and bring several benefits:

- Helps reassure members of the public, who assume that lawyers will remain up-to-date with frequently changing law and regulations;
- CPD is familiar and readily understood by lawyers and members of the public;
- Builds on existing systems, so requires less change than other measures;
- Benefits lawyers by focusing on individuals' personal development and offering competitive advantage/ a marketing opportunity.



“This seems like a good and obvious starting point, especially as you acknowledge that some good CPD and monitoring systems already exist. This definitely strikes me as the low-hanging fruit, providing an enforceable and measurable increase in competence with minimal disruption.” Panellist (SME owner, Male, 25-34, South of England)

“Ultimately, I would hope that [lawyers] would recognise that mandatory CPD would benefit them in a competitive market economy because if they can show that they are up to date with the relevant legislation, etc, then they are likely to be more competent in their roles and potentially have more clients as a result.” Panellist (Teacher, Female, 35-54, Midlands)

However, several panellists felt that CPD requirements would not be effective as a stand-alone measure. Instead, they should be part of a broader system, which includes more robust checks of evidence of a lawyer’s competence.

A minority of panellists were more dubious about the introduction of mandatory CPD requirements. Their reservation included:

- Easy for CPD to become a tick-box exercise:
  - Especially if the content is too heavily mandated or standardised across such a diverse profession, so that it becomes low-value or irrelevant to many lawyers;
  - Especially if the requirement is simply to ‘turn up’, with no checks, exams or reflection on learning;
- Easy for unscrupulous practitioners to defraud the system, for example, by saying they/ their employees have attended/ completed training when they have not;
- Attending/ completing training does not necessarily confer competence or expertise.

“I am a little dubious when I hear the word "Mandatory CPD activities" as it sounds a little pedestrian. It sounds as if it may be a tick box exercise. Attend a course or two, demonstrate that you have attended and then off you go. You could attend a one-day course, a two-day seminar, a one-week course, but this does not mean that you can demonstrate any understanding or substantive knowledge from this course. I still feel that these need to be examinable.” Panellist (Teacher, Female, 35-54, Midlands)

“I’m not a fan of this one. I think it’s too wishy-washy, and doesn’t really reassure consumers of anything... not robust at all. My main concern would be that the CPD courses could just be superficial, easy, and largely unnecessary courses which don’t prove anything to anyone.” Panellist (Teacher, Male, 35-54, Midlands)



## Revalidation

Panellists heard evidence about how revalidation was introduced to medicine as a way of providing assurance on doctors' competence<sup>8</sup>, and they reviewed information on how revalidation could work in legal services. Generally, they saw revalidation as a comprehensive and robust system for checking and ensuring ongoing competence. Most felt that revalidation could be applied to the legal profession and that it would drive up competence overall, and root out poor performers. Some panellists said that they had assumed that this kind of system was already in place in legal services, and they welcomed the standardisation it would bring across the sector.

"I am familiar with revalidation, as a nurse we do this every 3 years. This process is working well for nurses, so I don't see a reason why it shouldn't work with lawyers. It is a good way to showcase competency, updating your knowledge and reflecting on experiences/ courses." Panellist (Nurse, Female, 35-54, North of England)

"I imagine this may be welcomed by the genuine and honest well established Lawyers who would see this as a way of rising above some of the 'new kids on the block' and the crooked 'no win no fee' solicitors... These type of solicitors could fall off the edge as they would strongly resist and hopefully start to disappear from the profession." Panellist (SME owner, Male, 55-74, South of England)

There was a split in opinions over the likely impact on the industry:

- Some assumed that lawyers are already meeting some of the requirements (e.g. through CPD, recertification and appraisal), and that – with the right systems in place – it should not be too cumbersome;
- Others felt that revalidation could place a heavy burden on an already time-poor workforce, and that the onus will fall to individuals who will have to complete the requirements in their own time.

"We use a similar system to maintain ongoing competence in the outdoor education world. I think the pros are clear – for staff who are genuinely active, well informed and competent, it's a quick and easy formality... I cannot think of any reason the legal sector shouldn't use this approach. It's quick and simple for the genuinely competent, and those who aren't face a fair choice: improve or step down." Panellist (SME owner, Male, 25-34, South of England)

"Whilst I think this should be introduced, it would have an impact in terms of time on what is already (I imagine) a very stretched workforce. People would need time off to complete CPD and the monitoring of this process would also

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<sup>8</sup> Panellists considered a video where a representative from the General Medical Council explained how revalidation works for doctors, why it was brought in, and its impact.



take time. It is important that lawyers are given the requisite time to complete their compulsory training rather than being expected to cram it in at evenings and weekends.” Panellist (Teacher, Female, 25-34, South of England)

Panellists also raised several questions over how revalidation would be implemented, including:

- Who assesses lawyers’ portfolios and approves revalidation?
  - Panellists were not convinced that senior lawyers should be the ones to undertake this. They questioned their objectivity and whether they would have the time and skills to do it properly. Instead, panellists thought there should be an element of external independent review;
- Where would the costs lie, and who would they be borne by?
  - Panellists assumed that revalidation would be a costly approach for regulators/ inspectors, for individual lawyers and for law firms. They assumed that cost would pass onto clients, and questioned whether this would restrict access to justice;
  - Although some suggested clients would be likely to benefit in the long run if the quality of legal services improved.

“Senior colleagues may have more experience but it does not mean they are more qualified to assess someone else's work.” Panellist (SME owner, Female, 35-54, South of England)

“Nowhere is the phrase 'time is money' more apt than in legal services; here's another non-fee earning task that needs to be financed through client fees, which in some areas are already prohibitive to access to justice and therefore justice being done.” Panellist (Chartered engineer, Male, 55-74, North of England)

Even so, the majority of panellists supported the idea of introducing some form of revalidation, (i.e. demonstrating competence through CPD records, feedback and case reviews in order to re-certify), primarily because this is what they thought lawyers should be doing anyway. They also thought that it should not be too onerous, as long as lawyers kept records as they went along. They felt that the evidence required should comprise a mixture of objective/ numeric data and more narrative data.

“If we can go to the Nth degree to keep ourselves ahead of the competency requirement [in my industry], I am sure every single Legal practice can take a few hours away from billing monthly to ensure that each staff member is fully compliant and competent.” Panellist (SME owner, Male, 35-54, South of England)

“I don't share the concern that a new system of [re]validation might be too great a workload for individual lawyers to cope with. Surely if they are keeping records, attending CPD courses, keeping up to date, remaining fit to practise then proving that shouldn't be too arduous. Any significant extra workload would likely be concerned with meeting the standards everyone thought were being met in the



first place - this is no bad thing in my opinion.” Panellist (Female, 35-54, South of England)

A minority were less supportive of introducing a system of revalidation. Their reservations included:

- Concern that revalidation might be disproportionate to address current issues of competence in law;
  - However, they acknowledged that this was primarily because they had not seen evidence of the scale of insufficient competence within law, so found it hard to judge an appropriate measure.
- Worry that revalidation might become another tick-box exercise, resented by lawyers and with little real impact on improving and verifying competence.

“The drawbacks are that it could just become another tick box activity which isn't particularly valued. It could just become a hindrance to the lawyers - another hurdle to jump through, another load of paperwork to complete, and another fee to pay.” Panellist (Teacher, Male, 35-54, Midlands)

“I think the medical profession in theory has a very good system in place, however it can be open to abuse if it's merely treated as a box-ticking exercise. Every year in my profession I have to be subjected to an appraisal which is basically pointless as there is no support for further education, no funding for implementing new techniques or support for serious issues like racism. However every year I have to repeat the exercise so that some bits of paper can be filed for subsequent inspection.” Panellist (Dentist, Female, 35-54, Midlands)

## Spot checks

There was a real spread of responses from panellists to the idea of introducing random spot checks on lawyers' competence.

Some panellists were instinctively very supportive of spot checks. They found the idea reassuring and had assumed something like this already happened. Spot checks appealed to these panellists because:

- They assumed spot checks would identify issues with competence;
- Spot checks would encourage lawyers to maintain their competence because they would know their work could be checked at any point;
- If they were random and unannounced, spot checks would provide an accurate picture of competence.

“This is one of the better ideas. I like the idea of spot checks because it is randomised and cannot be prepared for... I feel this would be quite effective in providing evidence of a lawyer's competence.” Panellist (Teacher, Female, 35-54, Midlands)



“Spot checks are of course an effective way of getting a snapshot of work competency, organisation, auditing as no prep can be given and therefore there is less chance of fabrication and in theory, more of an incentive for employees to get it right at all times - this is true in any sector.” Panellist (Female, 18-24, North of England)

Many panellists said they would find it reassuring if competence spot checks were introduced for lawyers.

“Obviously spot checks would bring any problems to the forefront, so would benefit both the general public and help the legal profession in remedial action. Personally, I would feel a great deal more confident if it was known that lawyers were subject to these spot checks.” Panellist (Retired accountant, Female, 75+, Midlands)

“I’ve worked in other professions where random spot checks took place. I think they are important otherwise people get complacent and lazy.” Panellist (Female, 35-54, Wales)

However, some panellists liked the idea of spot checks in theory, but had reservations over how they would work in practice, specifically:

- Thoroughness of checks: how do you make sure checks are thorough enough to get a good picture of competence, but not overly burdensome for lawyers or time-consuming and costly for regulators?
- Scale of checks: need enough to make it a real possibility that lawyers will face a check to drive compliance, but this would be resource intensive for inspectors/ regulators;
- Subjectivity: How do you make sure the assessment is not subjective, especially if it is based on observation (where a lawyer may act differently if they know they are being observed)?
- Effectiveness: some argued that spot checks could be very effective in assessing competence for the few who are checked, but not necessarily effective in identifying insufficient competence more widely.
- Announced vs. unannounced visits: announced visits allow preparation and may not give an accurate picture, unannounced visits may impose disproportionate stress and anxiety.

“In person checks are less effective, because of people's ability to ‘turn it on’ while under direct observation.” Panellist (SME owner, Male, 25-34, South of England)

“The random sampling seems extremely unfair and stressful for those who are picked. This would be extremely time consuming for all involved and so many people could still slip through the net... I just don't see what this achieves - you might weed out the odd erroneous individual but you aren't maintaining overall



standards throughout the profession.” Panellist (Teacher, Female, 25-34, South of England)

“Although spot checking reveals so much about those that are involved, it is resource-heavy, meaning only an extremely small percentage of law professionals are likely to be involved. It is hugely effective, on a tiny scale.” Panellist (Female, 35-54, South of England)

A few panellists rejected the idea of spot checks, primarily because they did not think spot checks would be a proportionate or effective measure.

Overall, however, many thought that spot checks could be used as part of a mix of measures, but with a particular focus on where risks or issues had already been identified. They suggested that spot checks should:

- Be used (or used more frequently) in areas of law where consumers face higher risk of harm or negative consequences;
- Be used to check compliance and progress following an intervention where insufficient competence has been identified;
- Combine a mix of client reviews, observation/ visits, and review of case work.

## Remediation

The majority of panellists liked the idea of remediation in theory. They liked that it took a positive supportive approach to maintaining competence, and that it could pick up issues early and potentially prevent more serious competence issues. In the final deliberation sessions, one group suggested remedial measures (such as CPD, supervision, mentoring) if a lawyer failed competence/ knowledge tests.

“My impression is this is a sensible pragmatic approach to improving competence in the specific individuals who most need it.” Panellist (SME owner, Male, 25-34, South of England)

“I am all for this idea of supporting people to meet the standards rather than throwing sanctions at them.” Panellist (Teacher, Female, 25-34, South of England)

“This is a good idea as it has a positive focus and is trying to develop people and help them improve as opposed to punishing them for what could have been an innocent mistake.” Panellist (SME owner, Female, 35-54, South of England)

A minority dismissed remediation from the start, either because they felt that it meant that lawyers would be ‘let off’ for poor performance, or because they thought that it focused on putting issues right rather than preventing them from happening. The latter was a particular concern in areas where there are more serious consequences for clients/ consumers.



“I am not keen on this idea. It just looks as if you are giving the lawyers who haven’t done the work necessary a second chance and letting them off with poor performance. Anyone who fails to perform should be fined.” Panellist (SME owner, Male, 55-74, South of England)

“It's not a terrible idea, but I fear it's a little 'after the horse has bolted'... It is, by its very nature, reactionary, which might not be great when it's to do with high risk, high stakes areas.” Panellist (Teacher, Male, 35-54, Midlands)

However, most thought that remediation would be hard to implement well in practice. In particular, panellists were concerned about how issues for remediation would be picked up, and how remediation would be delivered and overseen.

With regards to identifying the need for remediation, panellists wondered who would judge when remediation is needed, on what basis they would judge this, and what would trigger remediation. They felt that remediation was dependent on an effective annual appraisal or monitoring system, with a reporting mechanism to a regulator. Therefore, for some, remediation sat well with a process of revalidation (which would identify shortcomings and trigger the need for remediation). However, if the onus fell on an employer to identify the need for remediation, panellists were concerned that it might not be in employer’s interests to do this, and that issues might not come to a regulator’s attention. There were also questions over how sole practitioners would be identified for remediation.

“This in my opinion would only work if linked with some kind of appraisal or formal monitoring process. There must be some kind of system for flagging individuals of concern to the regulator... The system will only work if someone (or some organisation) is diligently and proactively taking note of lawyers performance in a systematic way, to identify those who need remediation and avoid anyone slipping through the net. This will of course be a much bigger challenge with small solo practitioners than with large firms with corporate governance structures... A lazily or sloppily applied scheme will have no positive impact.” Panellist (SME owner, Male, 25-34, South of England)

Concerns over the implementation of remediation primarily related to the potential for subjectivity, bias and abuse. To expand, panellists’ concerns with implementing remediation included:

- Employers may lack the skills or time to properly implement and oversee a programme of remediation (e.g. to take into account an individual’s learning style and learning needs);
- Employers might view and use remediation as a step in the disciplinary process, rather than as a true developmental tool;
- People from minority ethnic groups might be unfairly targeted for remedial action, echoing trends in remedial and disciplinary action taken in other



professions due to a disproportionate number of complaints and criticisms levelled at lawyers from minority ethnic groups.

“It is very dependent upon the individual at hand and the working environment as to the effectiveness of this method.” Panellist (Female, 18-24, North of England)

“I'd be concerned that some managers would rattle through the process too quickly if they wanted to 'get rid' of a staff member... A similar process is in place in teaching but I feel it is open to abuse as it is very subjective.” Panellist (Teacher, Female, 25-34, South of England)

“Like most other professions, including nursing and doctors, there would be the strong possibility that minority groups are the ones who end up being at the tail end of remedial action, not because they are more incompetent, but because unfortunately and undeniably, structural racism is a facet of the society in which we live and I would want to know what safeguards were in place to stop spurious actions levelled against these professionals.” Panellist (Teacher, Female, 35-54, Midlands)

Overall, panellists felt that remediation might be useful in a suite of measures and that – if well implemented – it could help to address insufficient competence. However, it was seen as a 'behind the scenes' measure, and not one that would offer greater confidence to the public in the competence of lawyers throughout their careers.

## Feedback

Overall, panellists felt that, on its own, feedback had less use in ensuring and assessing ongoing competence amongst lawyers than other measures. However, there was a range of views about whether feedback should play some role in an overall approach to ensuring ongoing competence.

Several thought that feedback was a useful tool, particularly in assessing competence in soft skills and client experience, and because – for them – these were really important.

“Feedback should be gained primarily from service users. Law is a SERVICE, so the opinion of service users should be the primary means of feedback.” Panellist (SME owner, Male, 25-34, South of England)

However, they also acknowledged some challenges around using feedback to judge competence. A key concern was the subjective nature of reviews and feedback, in that feedback might come from clients with an axe to grind, or from colleagues or judges who were biased. Some panellists entirely rejected the idea of using feedback as a tool to measure competence for this reason.



“My concern about feedback is it might be biased, inaccurate and subjective. In my experience I have seen colleagues give glowing feedback to other colleagues who they have close friendships with.” Panellist (Teacher, Female, 35-54, Midlands)

“Would be concerned there might be quite a bit that is driven by other agendas. How you decide who offers feedback and how it is scored/ evaluated is a pretty wide debate. We do use Customer Satisfaction Surveys (the marketing people like them) but in realistic terms we (the surveyors) think they are just PR puff.” Panellist (Retired chartered surveyor, Male, 55-74, Wales)

Some also believed that feedback was a tool more suited to professional development than assessing competence.

“Positive feedback should be shared with professionals in order to boost morale and promote best practice; I just don't think this should form part of the competency standards as it is too subjective and open to abuse (e.g. if a client is bitter because they have lost a case, even though their lawyer has acted impeccably).” Panellist (Teacher, Female, 25-34, South of England)

“I think feedback is important to all professions, but that doesn't mean I think people should be measure solely on this. There are too many variables involved for it to be robust.” Panellist (Teacher, Male, 35-54, Midlands)

“I think this has a place in the overall system of ensuring capability and competence. As a standalone it pales in comparison to other methods. I do not think it can be an effective means to judge the legal profession.” Panellist (Nurse, Female, 35-54, North of England)

For those who felt feedback had some role to play in gauging competence amongst lawyers, the following considerations were important:

- Using feedback as part of a wider suite of measures in judging and facilitating competence, for example as part of a standard competence framework and a revalidation process (as happens with nurses);
- Ensuring feedback comes from a range of sources;
- Considering aggregated scores of feedback as a more objective indicator than narrative feedback;
- Considering using an independent assessor (similar to observation);

“Feedback is generally most useful when aggregated and therefore it's most useful when it's relatively objective, i.e. feedback scores rather than adjectives.” Panellist (SME owner, Male, 25-34, South of England)

