

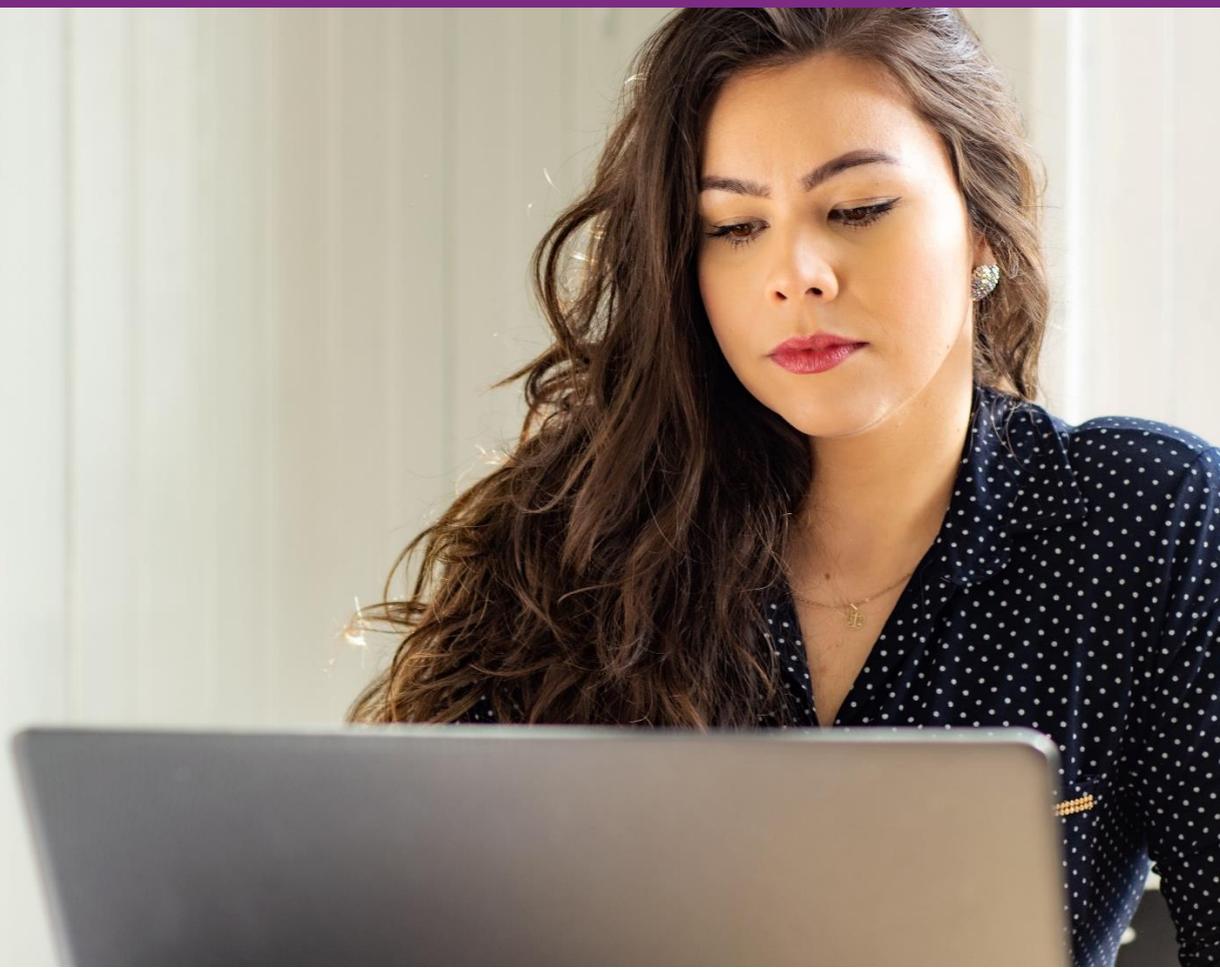
# Ongoing Competence in Legal Services

Executive summary of report on  
research into public attitudes  
July 2021



community  
research

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



## 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;
  - Information on six potential measures that legal services regulators could bring in to ensure ongoing competence amongst lawyers.

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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>.



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

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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.



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.

