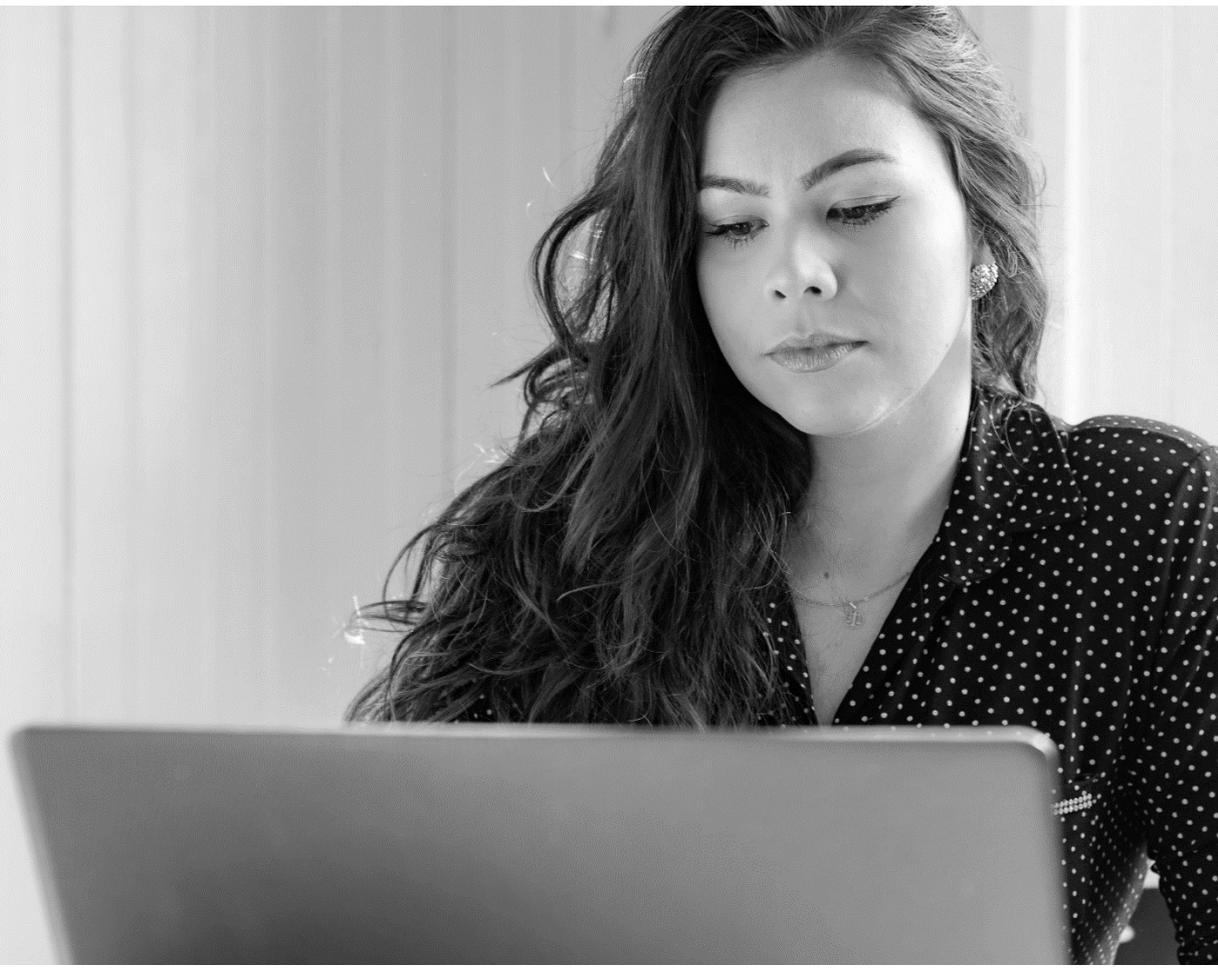


# Ongoing Competence in Legal Services

Technical appendices to report on  
research into public attitudes | July  
2021



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



## Contents

1. Deliberative panel methodology and materials	3
2. Deliberative panel sample	7
3. Quantitative survey methodology and sample	8
4. Quantitative survey questionnaire and video script	10
5. Deliberative panel video scripts	13



## 1. Deliberative panel methodology and materials

The deliberative panel involved live online discussions and an online forum which included short polling questions (answered individually, not visible to other panellists) and written bulletin-board style discussions (panellists wrote answers to questions, but could only see and comment on others' answers after they themselves had answered). The content and flow of the deliberative panel (along with the materials used<sup>1</sup>) was as follows:

Date	Theme	Tool	Input	Focus
8 Feb 2021	<b>Welcome &amp; introductions</b>	2 x live online discussions	<a href="#">PowerPoint presentation</a>	<ul style="list-style-type: none"> <li>Brief introduction to subject matter</li> <li>Introduction to each other</li> <li>Their role as panellists</li> <li>How the online forum works</li> <li>Q&amp;A</li> </ul>
9-10 Feb 2021	<b>Introduction to ongoing competence</b>	Online forum: Polling questions	<a href="#">Video on introduction to competence</a>  <a href="#">LSB ongoing Competence Glossary</a>	<ul style="list-style-type: none"> <li>Assumptions about extent to which professionals face regular competence checks</li> <li>Beliefs about extent to which professionals should face regular competence checks</li> </ul>
		Online forum: bulletin board	-	<ul style="list-style-type: none"> <li>Ability to judge whether a professional is competent</li> <li>Beliefs around how competence is currently assessed</li> </ul>
11-12 Feb 2021	<b>Competence checks for lawyers</b>	Online forum: bulletin board	Three videos: 1. <a href="#">Types of lawyers</a> 2. <a href="#">How lawyers are regulated</a>	<ul style="list-style-type: none"> <li>Spontaneous responses to information</li> <li>Impact of range of types of lawyers and types of law on expectations of competence checks</li> </ul>

<sup>1</sup> Please note: To maintain anonymity, videos from people who work within or with legal services have not been included. Please contact the Legal Services Board for more information on these videos at [ongoingcompetence@legalservicesboard.org.uk](mailto:ongoingcompetence@legalservicesboard.org.uk).



Date	Theme	Tool	Input	Focus
			<p>3. <a href="#">How competence is currently assessed in legal services</a></p> <p>Optional further reading on different types of <a href="#">competence frameworks</a></p>	<ul style="list-style-type: none"> <li>Spontaneous knowledge about competence checks in other professions</li> </ul>
15 Feb 2021	<b>Competence checks in other professions</b>	Online forum: Polling questions	<a href="#">Video on ongoing competence checks in other professions</a>	<ul style="list-style-type: none"> <li>Repeat of questions on assumptions and beliefs regarding existing competence checks in professions</li> <li>Importance of competence checks for professionals</li> <li>Expectations of rigour of checks for different professionals</li> </ul>
16-17 Feb 2021	<b>Comparing competence checks in law with those in other professions</b>	Online forum: bulletin board	Video on competence checks (revalidation) in medicine from representative of the General Medical Council	<ul style="list-style-type: none"> <li>Comparing systems between law and medicine</li> <li>Benefits and drawbacks of applying this model to law</li> </ul>
18 Feb 2021	<b>Competence and risk</b>	Online forum: bulletin board	<a href="#">Video on areas of law where there is more risk of harm or negative consequences</a>	<ul style="list-style-type: none"> <li>Reflections on information</li> <li>Any changes in views in light of this information</li> </ul>
19 Feb 2021	<b>Regulatory trade-offs</b>	Online forum: Polling questions	<p><a href="#">Video on the key policy considerations of changing the existing arrangements</a></p> <p><a href="#">Clarification FAQs on information so far</a></p>	<ul style="list-style-type: none"> <li>Sliding scale question – where should the balance lie between pairs of trade-offs?</li> <li>Most important things for regulators to bear in mind</li> </ul>
22-24 Feb 2021	<b>Six potential measures for ensuring ongoing competence</b>	Online forum: bulletin board	<a href="#">Six 'fact sheets' describing different measures to ensuring ongoing competence</a>	<ul style="list-style-type: none"> <li>Response to measures including likely effectiveness, any concerns, likely impact on lawyers, the public and the legal sector as a whole</li> </ul>



Date	Theme	Tool	Input	Focus
				<ul style="list-style-type: none"> <li>• Whether the approach should apply to all lawyers, just some (if so, which), or not at all</li> </ul>
24 Feb 2021	<b>Confidence in existing arrangements and ranking of new ideas</b>	Online forum: Polling questions	-	<ul style="list-style-type: none"> <li>• Do the arrangements now in place within legal services give you sufficient confidence in the competence of lawyers throughout their careers?</li> <li>• Ranking of six competence measures</li> </ul>
25-26 Feb 2021	<b>Views from within the legal sector</b>	Online forum: bulletin board	<p>4 x 3-minute videos recorded by representatives from:</p> <ul style="list-style-type: none"> <li>• The Solicitors Regulation Authority (SRA)</li> <li>• The Legal Services Consumer Panel (LSCP);</li> <li>• The Bar Council</li> <li>• A national law firm and the Law Society's Junior Lawyers Division</li> </ul>	<ul style="list-style-type: none"> <li>• What stood out?</li> <li>• Any changes in views in light of this information</li> </ul>
26 Feb 2021	<b>Summarising views</b>	Online forum: Polling questions	-	<ul style="list-style-type: none"> <li>• [Repeat of question] Do the arrangements now in place within legal services give you sufficient confidence in the competence of lawyers throughout their careers?</li> <li>• If not, what changes are needed?</li> <li>• How, if at all, the information presented changed views</li> </ul>
1 March 2021	<b>Final deliberation: The Panel's decision</b>	2 x online live discussions	<p><a href="#">PowerPoint presentation</a>  <a href="#">The key questions for deliberation</a></p>	<p>In smaller groups of 5-6:</p> <ul style="list-style-type: none"> <li>• Do the arrangements now in place within legal services give this panel sufficient confidence in the</li> </ul>



Date	Theme	Tool	Input	Focus
				competence of lawyers throughout their careers? <ul style="list-style-type: none"> <li>• Why / why not?</li> <li>• If not, what changes are needed to give this panel sufficient confidence?</li> <li>• What mix of measures gives you most confidence? And how frequently?</li> <li>• For all lawyers, or some? Which ones? Why?</li> </ul>
2 March 2021	<b>Final individual views on the key issues</b>	Online forum: Polling questions	-	<ul style="list-style-type: none"> <li>• Do you think that the regulators should introduce more specific rules and requirements for lawyers to demonstrate that they remain competent right through their careers?</li> <li>• Why do you say that?</li> <li>• Evaluation questions</li> </ul>



## 2. Deliberative panel sample

The deliberative panel was made up of 23 people with the following characteristics:

Characteristic	Number of people
<b>Gender</b>	
Male	9
Female	14
<b>Age</b>	
18-24	1
25-34	4
35-54	13
55-74	3
75+	2
<b>Region/ nation</b>	
North of England	4
Midlands	6
South of England	8
Wales	4
<b>Legal confidence</b>	
Low legal confidence	7
Medium legal confidence	8
High legal confidence	4
<b>Ethnicity</b>	
White British	18
Indian	3
Black Caribbean	1
Other ethnic group	1
<b>SEG</b>	
AB	4
C1C2	5
DE	2
<b>Experience/ background</b>	
Previously took part in research with LSB...	11
..of whom, are SME owner	4
Regulated professional	8



### 3. Quantitative survey methodology and sample

The quantitative research involved a 15-minute online survey administered by Panelbase with a sample of 1005 respondents recruited from their market research panel.

Respondents were recruited according to quotas. This was to achieve a sample designed to be nationally representative of adults based in England and Wales. This is by the English regions and Wales, age, gender, socio-economic group and ethnic origin. The proportions applied to the quotas were provided by Panelbase in line with their standard approach to polling for nationally representative samples in the UK.

The sample characteristics were as follows:

	Characteristic	Number of respondents	% of sample
Age	16-24	120	12%
	25-34	167	17%
	35-44	163	16%
	45-54	175	17%
	55-64	150	15%
	65+	230	23%
Region/ Nation	South East	160	16%
	London	143	14%
	North West	125	12%
	East Anglia	110	11%
	South West	99	10%
	West Midlands	99	10%
	Yorkshire	96	10%
	East Midlands	81	8%
	North East	46	5%
	Wales	46	5%
Gender	Male	502	50%
	Female	501	50%
	Prefer to self-describe	1	0%
	Prefer not to say	1	0%
SEG	A	43	4%
	B	236	23%
	C1	271	27%
	C2	201	20%
	D	151	15%
	E	103	10%
Ethnicity	White British	805	80%
	Indian	31	3%
	Black African	25	2%
	Eastern European	20	2%



Characteristic	Number of respondents	% of sample
Pakistani	14	1%
Chinese	10	1%
Black Caribbean	7	1%
Irish	8	1%
Bangladeshi	8	1%
White and Black Caribbean	7	1%
White and Asian	5	0%
White and Black African	1	0%
Any other white background	28	3%
Any other mixed background	9	1%
Any other Asian background	11	1%
Any other Black background	1	0%
Any other	8	1%
Prefer not to say	7	1%

As a sample (rather than the entire population of adults aged 18 and over living in the UK) has been interviewed, all results are subject to potential sampling tolerances (or margins of error). Strictly speaking, these tolerances apply only to random samples with an equivalent design effect. Although the Panelbase panel itself is non-random, given that we are sampling a random group within this, it is accepted statistical and industry practice to treat the sample as random.



## 4. Quantitative survey questionnaire and video script

### Questionnaire

The [questionnaire](#) used in the survey is included here.

### Quantitative survey video script

The video was 7:26 minutes long, and in an animated format using images and some text to accompany a voiceover. The script for the voiceover was as follows<sup>2</sup>:

#### **Script: Competence in legal services**

This survey is all about competence of legal professionals. By competence we mean – having the right knowledge, skills, behaviours and attitudes to be able to do the job well.

Anyone wanting to work in a regulated profession (such as medicine, engineering, teaching, the law) will need to go through checks to show they are competent to work in that profession before being allowed to start work. Most regulators also have ways of making sure that the professionals they regulate remain up to the job right through their careers – we call this ‘ongoing competence’.

For example, doctors, nurses and midwives have to ‘revalidate’ every 3 or 5 years. This means they have to submit a portfolio of evidence showing that their skills, knowledge behaviours and attitudes still meet the standards required in their profession. Chartered engineers have to complete regular training and development sessions, and their regulators will carry out spot checks to make sure this happens. Accountants doing audits are subject to audit quality inspections by their regulator.

In law, there are several approaches to ensuring ongoing competence. The legal services sector in England and Wales is complex – there are 9 different types of regulated lawyer, from solicitors and barristers, to lesser-known lawyers such as conveyancers, chartered legal executives, and patent attorneys. There are different regulators to oversee each of the different types of lawyer. In 2007, Parliament decided to create the Legal Services Board to oversee the different legal services regulators in England and Wales. However, each regulator sets its own rules and standards, including what their regulated professionals must do to maintain their competence.

---

<sup>2</sup> For copyright reasons, we cannot provide the full video, but please contact the Legal Services Board if you want further details on the video at [ongoingcompetence@legalservicesboard.org.uk](mailto:ongoingcompetence@legalservicesboard.org.uk).



## **How is competence assessed currently in legal services?**

We want to share some examples of what happens currently in legal services in terms of ongoing competence checks, but bear in mind this is not a complete list.

All regulators require lawyers to complete continuing professional development (or CPD) - training or learning activity to ensure they remain up to date. Some regulators expect lawyers to undergo specific training, such as a course in how to deal with vulnerable witnesses. Some regulators also set requirements for lawyers working in a particular area of law, such as dealing with young people.

As well as regulators, some other types of organisations carry out competence checks. For example, some law firms ask their customers to provide feedback and some judges will provide feedback to barristers if they have any competence concerns.

The Crown Prosecution Service observes the performance of lawyers prosecuting cases in the courts. Some membership organisations run accreditation schemes or quality marks where lawyers or firms can display a badge if they meet certain standards.

Parliament set the Board objectives to regulate both in the interests of the public and for a strong and effective legal profession.

The LSB is currently looking at this issue of how all lawyers demonstrate they remain competent through their careers, not just once they qualify.

The LSB wants to answer the following question –

Do the arrangements now in place within legal services give us sufficient confidence in the competence of lawyers throughout their careers?

They are considering this for a number of reasons, including:

- There are no consistent minimum requirements for demonstrating competence applied across all types of lawyer. This is different from other professions such as medicine, nursing, engineering and accountancy. The legal regulators have different rules and standards. Despite the examples provided above, there are few mandatory requirements, and competence is not routinely checked.
- Ensuring that the different regulators have the right tools should minimise mistakes by lawyers that could harm their customers. These mistakes can also harm others in society, such as victims of crime. If good systems are in place, this should help to ensure that the public in general has trust and confidence in the legal system.
- Currently, research shows that consumers find it difficult to know whether the legal services they receive are good quality, tend to assume all lawyers are competent, and that there are robust checks in place to ensure lawyers remain competent throughout their careers. There is then a difference between what currently happens (which we talked about earlier) and what the public expects. There is



some evidence of poor practice in some areas. For example, there have been some concerns over standards of advocacy in the courts (for example, where lawyers represent their clients in criminal, immigration and youth courts). There is also evidence of factual errors in conveyancing, which can slow up or compromise the buying and selling of properties.

- There are some areas of law where people face higher risks of harm resulting from poor competence. Examples include cases where the consequences for an individual are potentially severe (for example, losing their liberty, access to family, or significant amounts of money or property), and where individuals are particularly vulnerable (such as children, people with learning disabilities, and asylum seekers and refugees who may have experienced trauma and face language barriers).

There are people who think that the current arrangements are sufficient and that tightening up the rules could have a negative effect on the legal profession, and ultimately their customers and others in society affected by legal advice.

Some say: Lawyers trade on their good reputation and performance to ensure they keep getting work. Therefore, it is in their interests to keep themselves up-to-date and ensure they continue to do a high quality job for their clients.

They also say there is no evidence of widespread problems, and evidence of poor competence is limited to specific areas of the law or a small number of individuals. Some regulators say that they do not generally see issues with poor competence in the profession.

Some also think that the lawyers themselves say they are best placed to decide what they need to do to stay up-to-date and highly skilled. They say that measures imposed by regulators such as continuing professional development requirements could become a tick-box exercise that makes no real difference.

They also say that further rules and requirements could be difficult to implement and adapt to different areas of law, take time, and ultimately end up increasing the prices they charge clients.

To inform its decision, the LSB has already spoken with people from across the legal profession, and other professions. It also wants to hear from members of the public on what they want to happen, and what would give them confidence in the competence of lawyers throughout their careers. The LSB has already spoken in depth with a few members of the public. But they want to take more views into account: this is why we want your views in this short survey.



## 5. Deliberative panel video scripts

### Script: Video 1 - Introduction to competence

This research is all about looking at the competence of legal professionals over the course of their careers. We'll start with looking at what we mean by 'competence'.

What do we mean by competence?

One helpful definition of competence is that it combines "up-to-date legal knowledge and skills with good client care, to deliver advice in a way that is useful." We might say that competence means that you have the trust in someone to do the job properly.

Competence in legal services can include:

- Up-to-date Advocacy skills
- Ability to understand knowledge and communicate with clients

When we're thinking of legal services, competence might include things like

- Knowing the law and keeping up to date with any changes in the law
- Advocacy skills, so being able to present a client's case in a clear and compelling manner Being able to connect with clients, no matter what their background, and to understand their circumstances and how their circumstances affect them.

It is also worth bearing in mind that the knowledge and skills we expect of lawyers is likely to differ. It can depend on things like:

- If they represent people in court (like Barristers), or not
- The type of law they practise (for example, compare a high street solicitor specialising in wills and divorces, with a solicitor who negotiates deals for multi-national companies to merge, with a solicitor who represents asylum seekers).
- On their seniority, experience and the level of responsibility they have (e.g., if they practise independently or are overseen by someone more senior)

We also need to think about the competence of lawyers at different stages in their career.

It's easier to know a lawyer's level of competence at the start of their career: they have demonstrated that they reach the threshold (or 'entry level') standards needed to enter the profession...

But how can we be sure that lawyers remain competent throughout their careers?

This is what we will be focusing on over the next few weeks in this research.

### Script: Video 2.1 – About lawyers

Lawyers give advice to people about the law and represent their interests in issues involving their legal rights and responsibilities. We are going to be talking about



lawyers. When we talk about lawyers or legal services, most people will think of solicitors and barristers, but in fact there are many other types of lawyer.

As we are going to be asking you about legal services, we want to make sure you know what kind of people we are including and what they do:

So – **Solicitors** – yes this is the biggest group

With more than 100,000 people working as solicitors in England and Wales. Often, they work for law firms like the ones you might see on a local high street. Sometimes they are employed by organisations like councils, banks and charities.

Solicitors can give legal advice and offer legal services that can help you resolve legal issues. Different solicitors are experts in different areas. For example, some solicitors specialise in divorce cases, while others specialise in personal injury cases.

Then there are **Barristers**

There are over 15,000 barristers in England and Wales. Many of these give specialist advice to represent people in their legal disputes, including during court appearances. Criminal barristers are those we see on TV wearing a wig!

But there are quite a few other types of lawyers that may be less familiar, we'll briefly take you through them:

### **Chartered Legal Executives**

These are lawyers who tend to specialise in one or two areas of legal work. Most of them support solicitors. They are also able to represent people in some courts or at a tribunal.

### **Patent attorneys and trademark attorneys**

are specialist advisers, they can help people to protect intellectual property rights, for example to protect new inventions, artistic works, industrial designs and brand names.

Licensed conveyancers are specialist property lawyers who can deal with all the legal, administrative and financial requirements involved in buying or selling property or re-mortgaging a property you already own.

### **Notaries**

Notaries make sure that various types of legal documents are in order. One of the main areas of specialism for Notaries is the authentication and approval of signatures and documents for use abroad. If you are buying or selling property abroad, if you want to make a will to deal with those assets, or if you are applying to marry, work or live abroad you may need a notary to help you with the documents. Many notaries are also solicitors.



Then there are **Costs lawyers** - Legal cases take a long time to sort out, especially if they end up in court. Generally speaking, the longer the case the more likely it is that the legal bill will be increasing. Sometimes lawyers are needed to help sort out issues that can arise from legal costs.

**Probate practitioners** - Probate involves dealing with the affairs of someone who has died. Some lawyers specialise in these services. Some accountants also deal with probate.

There are some other types of lawyers such as Immigration Advisers and Claims Management companies which fall under a different separate regulation system outside of the Legal Services Board's control. There are also some unregulated businesses such as Will Writing companies that work in these sorts of areas.

## Script: Video 2.2 – Legal Services Regulation

This project is being done for the Legal Services Board. They oversee regulation of legal services in England and Wales.

What is regulation? Well very simply it means setting rules and ensuring the relevant people or organisations keep to them. You may well not have heard of the Legal Services Board before doing this research.

Other regulators that you're more likely to have heard of are Ofcom who regulate television, radio and telecommunications, Ofgem who regulate the energy market, the General Medical Council, they are the professional regulator for doctors, and the Financial Conduct Authority who regulate financial services.

All these organisations exist to protect the public. They make sure that professions and industries know what rules they must adhere to, and they step in when rules are broken.

The Legal Services Board is slightly different. Some of the regulators you may know better, but we'll explain that in a moment. You've already seen that legal services cover lots of different types of lawyers. Each of these has their own regulator to set rules and make sure that those particular lawyers and law firms stick to the rules, ensuring the public is protected. Solicitors, for example, are regulated by the Solicitors Regulation Authority (SRA). barristers by the Bar Standards Board. There's a regulator for legal executives and one for licensed conveyancers and so on.

The Legal Services Board then oversees all these different regulators. They don't regulate solicitors directly. They make sure the SRA is doing the job right. They oversee the whole sector to ensure that the public is equally and properly protected across all the different kinds of lawyers and legal services. And they also check the Legal Ombudsman, that looks at complaints about legal service providers, is doing its job well. The Legal Services Board then wants to see legal services that everyone



can access and trust. They're quite a small organisation employing around 30 staff. They were set up by an Act of Parliament – the Legal Services Act 2007, and they've been operating since 2009. The legal Services Act sets out eight regulatory objectives for the Legal Services Board to pursue. They are Protecting and promoting the public interest, Supporting the constitutional principle of the rule of law, improving access to justice, Protecting and promoting the interests of consumers, Promoting competition in the legal services market, Encouraging an independent strong diverse and effective legal profession, Increasing public understanding of the citizens' legal rights and duties, Promoting and maintaining adherence to professional principles.

They have some functions or things they must do, including making sure that the organizations that regulate lawyers are independent of lawyers; making sure that those organizations that regulate lawyers do a good job; approving any changes that regulators want to make to the rules that lawyers must follow; approving the fees that lawyers pay each year to meet the cost of regulation.

It's important to note all the regulators including the Legal Services Board are funded by the legal profession itself, not by the Government or by taxpayers. They also make sure the legal ombudsman is doing a good job. These are things they have to do. But they can choose how they achieve their objectives, and in this project, we'll be asking your views about what their priorities should be over the next few years. However, we should also explain there are some things they don't do. They don't resolve disputes between consumers and lawyers. They don't directly regulate individual lawyers or legal businesses. They don't choose who's entitled to receive legal aid. They don't run the courts or have anything to do with judges. And they don't, of course, change the law.

Finally, we want to explain what kinds of legal services actually are regulated. Many people think that only lawyers or legal businesses that are regulated can provide legal services to the public. In fact, it isn't necessary to be regulated to provide many types of legal services. There are six legal activities that only qualified solicitors, barristers or other types of lawyers can provide. These are known as the Reserve legal activities, and they are representing someone in court, litigation i.e. taking legal action through the courts, some parts of the conveyancing process, probate activities, the activities of notaries i.e. verifying that various documents are right, and administration of oaths, preparing documents that have to be signed or witnessed where people need to swear the truth of a statement they're making. For everything else, anyone could set up a business to offer legal services. For example, there are unregulated businesses which will prepare wills, or give employment law advice. Some of those companies will belong to trade associations, which may put consumer protections in place, but they don't have to have or be qualified lawyers. In reality, most people choose to use solicitors, barristers, and other regulated



lawyers for many legal services. These types of lawyers are regulated for everything they do, not just the six things that are Reserve legal activities.

The Legal Services Board could of course make recommendations to Government on whether to change the list of Reserve legal activities, but it would be up to Parliament in the end to make the final decision.

All of this hopefully explains what the Legal Services Board does, which is important for you to understand as we progress our discussions. Thank you for taking the time to watch.

### Script: Video 2.3 - How is competence assessed currently in legal services?

We've heard about all the different kinds of legal professionals, and the different regulatory bodies that oversee them.

Now we're going to find out more about how the competence of these legal professionals is assessed over the course of their careers.

In the last couple of videos, we saw that the Legal Services Board oversees the 9 different regulators, who in turn oversee 9 different types of lawyers.

Within the different groups of lawyers, there are various requirements and processes that regulated legal professionals have to follow to show they are competent at their jobs.

However, there is no single structure or approach for demonstrating ongoing competence across all the different lawyers.

The different regulators have each separately brought in requirements that they think are needed in their area of law.

Here we will give you some examples of what is in place in different areas of law.

A **competence framework** sets out the core skills, knowledge and attributes that an individual needs to be competent, that is, to do their job to an acceptable standard. As competence framework can be set by a regulator for those they regulate.

In legal services, there are competence frameworks available for most types of lawyers (but not all of them) , and we have included another attachment with links to the competence frameworks from the different regulators, so you can have a look at those in more depth if you wish. Some of the examples include competence frameworks from the Solicitors Regulation Authority (for solicitors), and from the Bar Standards Board (for barristers). They both set out the main areas of competence that solicitors or barristers must have. They cover things like:



- Personal values, ethics, professionalism and judgment
- Technical legal knowledge and skills
- Working with others
- Managing themselves and their practice

It's worth noting that the competence frameworks from the legal services regulators are often focussed on initial qualification, and less on ongoing competency checks. Competence frameworks will also vary, so there may be differences in competency requirements for the same task or skill between different types of lawyer.

None of the legal services regulators check up on whether legal professionals are using the competence frameworks, but if there has been a complaint and the regulator needs to investigate, they may ask the lawyer to demonstrate how they have met the competences and to show records of their training and development.

**Continuing professional development (or CPD)** is learning that individuals undertake to improve their skills, knowledge and attributes. CPD activities vary from profession to profession, but most often are short training seminars or courses, sometimes offered by approved providers.

CPD is required by all of the regulators in the legal services sector, although each one has slightly different rules and guidance in place so there is not a consistent approach. Some specify minimum hours, some have points-based systems (where lawyers get points for different courses and types of learning), and others have outcome/output-based systems.

Solicitors and barristers both have to declare they have completed their CPD requirements in order to renew their annual certificates to practice (which are required so they can work as solicitors or barristers). The regulators may carry out spot checks on solicitors' firms or barristers chambers to look at how the CPD requirements are met.

Sometimes, CPD can be brought in when a problem with quality has been identified.

One example is some training brought in in 2018 for lawyers who work as advocates for children and vulnerable witnesses in criminal courts. The training was developed in response to concerns about the experience of victims of crime and vulnerable witnesses navigating the justice system. It is designed to ensure advocates understand the key principles behind the approach to and questioning of vulnerable witnesses. It is designed for all lawyers who work as advocates and is structured in three stages:

- Compulsory online training
- Face-to-face course, including role playing questioning witnesses
- Online resources to consolidate learning.

To date, over 3000 members of the Bar, Crown Prosecutors and solicitors have received the training.



**Feedback** on an individual lawyer can come from various sources (such as clients/consumers, peers, colleagues, supervisors) and can be used to inform an assessment of an individual's competence.

In some parts of the legal services sector, feedback is captured and used. Here are some examples:

- Some law firms have mechanisms for capturing client feedback, such as post-closure surveys or deal debriefs
- Some law firms have appraisal models that include collecting feedback
- Some barristers' chambers receive feedback. This could come from instructing solicitors, clerks or senior barristers
- Some judges' circuits provide feedback to individuals or chambers if they have concerns about the competence of barristers.

It should be noted that these measures are not formal, regulatory requirements, so feedback is not necessarily collected routinely or consistently.

**Accreditation** is formal recognition that an individual or entity is competent to perform specific tasks or recognised for having particular skills, knowledge and attributes. There are some examples of accreditation schemes being used currently in the sector, for example, by the Law Society. The Law Society is the professional association that represents and governs solicitors in England and Wales. As part of this, The Law Society provides services and support to practising and training solicitors, including running a number of different accreditation schemes.

There are accreditation schemes that are available to individuals, which lawyers choose to demonstrate specialist knowledge and expertise in areas such as conveyancing, family law, and criminal litigation. Lawyers might also go for accreditations to differentiate themselves from their competitors. Accreditation is also available to firms, such as the Lexcel legal practice quality mark.

Each individual has to demonstrate they are eligible for accreditation through an application and assessment process. Some accreditations include mandatory training courses.

Once a lawyer has achieved accreditation, they must maintain it through continuing professional development.

Individuals must go through a reaccreditation process every three years, which involves checking CPD and a review of their competence through case studies, case reports, and interviews.

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

Accreditation is voluntary, not required.



**Observation** is a process where an individual lawyer is observed doing their job so the observer can provide feedback on the lawyer's competence.

At the moment, observation is not used widely in legal services.

One example of where it is used is in the Crown Prosecution Service, or CPS. The CPS is the independent public body that carries out criminal prosecutions in England and Wales, and it employs around 3,000 lawyers (mostly solicitors and barristers, many of whom are advocates).

Crown Prosecution Service (CPS) advocates have ongoing assessments to ensure they remain competent. This includes being observed doing their job in court on two occasions annually, at least one of which should relate to a contested case (that is, a trial in court). These assessments are usually conducted by the advocate's line manager, but may be conducted by an external assessor.

There is a formal framework for these observed assessments.

Currently, this process only applies to lawyers who are employed directly by the Criminal Prosecution Service. It does not apply to lawyers who work as advocates in court but who are not employed directly by the CPS (they are known as 'external advocates'). However, there are processes to refer advocates to the Circuit Advocate Liaison Committee for assessment if there are concerns about their competence.

### **Other competence checks**

The checks that we have just talked about are those that are carried out by the legal services regulators. Of course, lawyers do face other checks on their competence in their careers, from both their employers and their clients.

For example, various law firms, barristers chambers, and other employers are likely to review the performance of lawyers they employ through systems, such as appraisals or personal development reviews, and line management meetings, particularly for more junior members of staff. You could argue that these are, in fact, competence checks. However, there are a few things to remember:

The approach differs between employers – they are not standardised, and some firms will be more thorough at carrying out performance management checks than others. If you have worked for a number of different employers, you will probably know how much things like appraisal and line management meetings differ between organisations.

These 'checks' are not overseen by the regulators, which means that these are not tools that the regulators use to assure themselves that the professionals they regulate do in fact remain competent through their careers.

Another factor that could drive competence amongst lawyers is market forces. You could say that – because people pay lawyers to get it right – those who are not



doing a good job do not get the work. For example, a solicitors' firm might be less likely to recommend a barrister to represent their client if that barrister has a poor reputation. However, we also know that some people find it hard to judge whether a lawyer is, in fact, good at their job or not. Previous research has found that members of the public find it hard to judge the quality of legal professionals when they need to appoint a lawyer. This means that market forces probably do not 'weed out' poor practice so effectively in markets where members of the public choose lawyers for themselves.

So now you know about some of the mechanisms used in the legal sector by regulators to make sure lawyers remain competent through their careers beyond the point when they have initially qualified.

We have heard about the **competence frameworks** from various legal services regulators, different types of **CPD** (or learning and development) 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.

We also saw that – while these schemes exist, not all of them are mandatory or required, 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.

Now we want to hear from you about what you think about the current arrangements – whether it is what you expected, and also whether you think that the type of law and the type of lawyer should make a difference to the types of competence checks in place.

### Script: Video 4 – How competence is assessed in other professions

All professions have different systems for assessing competence and use slightly different words and phrases to talk about it. Some talk about standards, some talk about competencies, some talk about competences, but broadly we are talking about similar things.

Compared to other professions, legal services take a relatively light touch approach.

We're going to show you some examples of different professions and the tools they use to assess and monitor ongoing competence.

First of all, teachers

- The Department for Education introduced The Teachers' Standards which set a clear baseline of expectations for the professional practice and conduct of teachers and define the minimum level of practice expected of teachers in England.



- The Teachers' Standards must be used by maintained schools to assess teachers' performance. They can be used by all schools and teachers to identify development needs and plan professional development.
- As you may know, most schools in England receive inspections from Ofsted. As part of these, inspectors will consider the extent to which the Teachers' Standards are being met when assessing the quality of teaching.
- The Department for Education also provides a description of what effective continuing professional development (or CPD) looks like for teachers in its Standard for Teachers' Professional Development.

### Chartered Accountants

- Chartered accountants are regulated by the Institute of Chartered Accountants in England and Wales.
- Like teachers, Chartered accountants are also required to maintain their professional competency by way of CPD.
- However, their regulator does not specify the form that CPD should take nor does it specify the number of hours or points that must be obtained. Instead, members must undertake whatever development activity is required for them to remain competent in their roles.
- Members must keep a record of their CPD activities and must also make an annual CPD declaration to this effect, which is audited on a sample basis. The regulator monitors compliance with the CPD regulations by requiring firms to return a CPD declaration each year for their staff.
- Chartered accountancy firms also receive regular visits from their regulator for quality assurance monitoring. The visits vary in frequency depending on factors such as the size of the firm and their risk profile. The firm receives prior notice of the visit in order to prepare the paperwork that will be inspected.

### Engineers

- The UK Standard for Professional Engineering Competence sets out the competence and commitment required for registration as an Engineering Technician, Incorporated Engineer or Chartered Engineer.
- Engineers are also required to make a commitment to maintaining their competence through CPD and recording that development. The professional engineering institutions undertake annual random samples of registrants' CPD records and provide appropriate feedback.
- Professionally active registrants who persistently do not respond to or engage with requests for CPD records risk removal from the Engineering Council Register.

### Pilots

- There are core competencies that all airline pilots need to maintain. These outline how a pilot should behave and perform in order to be successful in his/her career



and be able to contribute to continued high level of safety for air travellers and crew across the globe.

- All pilots have to pass certain examinations every six months in order to keep their licence. Pilots are regularly examined in-flight and periodic simulator testing is required by the European Aviation Safety Agency.

Here's a grid that gives you an overview of the different types of tools that different professions use to assess the ongoing competence of those working in that profession. We're going to talk to you about doctors in a bit more detail in the next task but are including them in this grid.

- We have used the term 'spot checks' here, but other terms may be used in different professions (such as inspections, observations, or assurance visits)
- Revalidation is where an individual must complete a series of activities in order to stay practicing, which might include a practical demonstration of their knowledge or skills. It is sometimes known as reaccreditation. We'll tell you more about revalidation when we talk to you about what doctors do.

If you'd like to find out more detail about what happens in other professions, we have provided some extra information along with this presentation.

### Script: Video 5 – Risk factors in Competence

We now know that there are lots of different types of lawyers, from solicitors, to barristers, to notaries to conveyancers and probate lawyers.

Lawyers also work in a hugely diverse range of areas. In fact, almost all areas of our life have legal aspects, which means that there are lawyers who deal with everything from property changing hands, to our employment arrangements, to custody of children in divorce, to mergers of multinational companies, to shipping deals, to helping asylum seekers with their claims, to defending people accused of serious crimes.

This diversity in the legal profession has implications when we are thinking about whether we want to change the way lawyers demonstrate that they are competent. We have to ask, for example, whether we should treat all lawyers in the same way?

One of the things the regulators have to think about are the risks people face when using legal services. There are some areas of law where there is more risk of harm or negative consequences.

We want to look at this link between competence and risk in this short video.

There are three main reasons why people face more risk when they use particular types of legal services:



- Either because the consequences of the legal proceedings are potentially severe,
- Or because the client is particularly vulnerable
- Or because there is evidence of poor practice in specific areas of law

We'll look at these in turn in the next few slides.

Firstly, someone using legal services might face greater risk of harm or loss because the issue they are experiencing could mean severe consequences. Examples of this include losing your liberty by being sentenced to jail, losing custody of, or connection with, your family, being sent back to a country you fled in fear of your safety, or losing a significant amount of money or property.

Secondly, certain people are at greater risk in legal proceedings because they are inherently more vulnerable. Examples here include children, asylum seekers and refugees, and people with learning disabilities. These are people who find it harder to understand what is going on, make decisions, or express themselves and their needs.

Finally, people can face higher risks of things going wrong in certain areas of law because of poorer practice. The Legal Services Board has evidence of issues with quality in areas of law such as conveyancing (which is the buying and selling of property), immigration, and youth advocacy.

For example, the Legal Ombudsman has said that a quarter of its work relates to complaints about conveyancing. There is also evidence of a high rate of errors made by conveyancers in the documents they submit to the Land Registry, which can hold up the process of buying or selling a property or can leave buyers unprotected because their interest in a property is not registered.

Various reports have raised concerns about the quality of immigration and asylum legal services. This includes some solicitors lacking the skills to obtain and record sufficient, relevant information from asylum seekers or lacking knowledge about the law underpinning specifics of cases. The Legal Ombudsman has said that, although the number of complaints it receives about immigration and asylum is low compared to other areas of law, when things do go wrong, the consequences are serious. Immigration and asylum clients tend to be in situations of 'extreme vulnerability', particularly because there are potential language barriers, and their situations are often urgent.

Another area of law where there have been concerns over quality is advocacy, by which we mean representing someone in court. Of particular concern is criminal advocacy, especially as the consequences are potentially serious when poor quality advice leads to, for example, a loss of liberty or further suffering for victims of crime when a conviction is not achieved. A report in 2018 found that advocacy practitioners were considered to be competent generally, but standards were declining in core skills such as case preparation and an advocate's ability to ask



focused questions. The biggest issue was said to be advocates taking on cases beyond their competence.

Youth advocacy – lawyers representing young people in youth courts – has also been an area of concern. A report in 2015 found that the quality of youth advocacy was highly variable, and that advocates did not always have specialist knowledge of youth justice law and provisions; and that they were not always able to communicate effectively and build relationships with children and young people. In response to this report, the Bar Standards Board brought in specific Youth Proceedings competences that barristers must have if they want to practise in youth courts.

We should note that these are some of the areas where the LSB has evidence of poor practice. There may also be other areas of law where there is poor practice that the LSB is not aware of.

So now we found out a bit about how diverse the legal profession is – in terms of the types of lawyers out there, the types of law that they practice, and in terms of the different levels of risk for people who use legal services, which may depend on their type of legal issue, how vulnerable they are, and the quality of their lawyer.

### Script: Video 6 – Background to Options

This research is part of a substantial review that the Legal Services Board (or LSB) is doing looking at how the legal services regulators make sure that the professionals they regulate remain competent through their careers. As part of this, they are speaking to (and gathering evidence from) all sorts of people in the legal services sector and beyond, and this research with you is part of their review. This is to make sure that the LSB has the views of members of the public (or citizens), as well as those who work in and with the profession.

By this stage in the forum, you have looked at what happens currently to make sure that lawyers remain competent after they qualify. You have also looked at what happens in other professions, and at the differences between types of lawyers, types of clients (some of whom may be more vulnerable), and types of law (some of which might carry more risk for clients).

Now we want to bring it all together and start to consider what you think the legal services regulators should do in the future to make sure that legal professionals stay competent right through their careers. We know that there are rigorous checks on entry to the profession, but after that, regulators carry out few formal checks on an individual's competence throughout their careers. We'll be asking whether this needs to change, and if so, how.

Some of the things that the Legal Service Board is considering introducing include:



- A core competence framework for all lawyers. This would be a standard framework shared across all the different types of lawyer and areas of practice.
- Feedback mechanisms – ensuring that lawyers gather feedback from others on their performance
- Bringing in standard rules about Continuing Professional Development, possibly including some mandatory modules for all lawyers, and more rigorous checks and audits on CPD activity;
- Spot checks on lawyer's competence, such as assurance visits, observation, and peer review;
- Remediation, which is when a lawyer is required to take part in certain activities such as training or supervision after a concern about their competence has been identified. Remediation is about providing opportunities to learn and improve, rather than punishing someone through disciplinary action; and
- Revalidation – this would be a formal process where a legal professional would have to demonstrate that they remain competent to do their job. This could take place every 3-5 years and could be something a lawyer has to do to be able to continue working as a registered legal professional.

We'll go through these in more detail next week.

