

Meeting: Legal Services Board

Date: 19 July 2022

Item: Paper (22) 40

Title: Ongoing Competence – Final Policy for Approval

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Status: Official

Purpose of the paper

1. This paper presents a final statement of policy on ongoing competence and a consultation response document. It seeks approval for issue of the statement and for publication of the statement and response.

Recommendation(s)

2. The Board is invited to **approve** the final statement of policy and consultation response document for issue and publication; and **delegate** to CE approval of final minor changes prior to publication.

Background

3. The LSB began work on ongoing competence as one of its five-year policy objectives in 2019. Our work on ongoing competence is designed to meet the regulatory objectives to protect and promote the public interest and the interests of consumers. It is central to the LSB's ambition to reshape legal services to better meet society's needs and provide consumers with fairer outcomes, stronger confidence and better services.
4. From December 2021 to March 2022, we consulted on a draft statement of policy setting out new expectations for the regulators on assuring the ongoing competence of the authorised persons they regulate.
5. In June 2022, the Board discussed the emerging themes from the consultation responses. We received over 40 submissions from a broad range of stakeholders reflecting the interest and high quality of engagement we have seen during this project.
6. The Board noted respondents' support for the overall intent of the draft statement and supported our proposed key areas for changes, prompted by feedback on proportionality and implementation in particular.

Changes in the final statement

7. The proposed final statement of policy is available at Annex A. In light of the responses to the consultation, we have made changes to the statement of policy in the following substantive areas.
8. On **proportionality**, we have:
 - a) Emphasised the need for regulators to undertake regulatory activities in line with the Better Regulation Principles (paragraph 14 of the final statement, Annex A).
 - b) Emphasised the need for regulators to be alert to areas of risk when seeking to meet the outcomes (paragraph 15).
 - c) Clarified that regulators are expected to explain why they have adopted their chosen approach to meet the outcomes and expectations (paragraphs 17-19).
 - d) Clarified what measures regulators *must* undertake to meet our expectations (paragraphs 20, 22-23, 25, 27).
 - e) Clarified what measures are included in the statement as examples to *consider*, as regulators determine how to meet the outcomes and expectations (paragraphs 21, 24, 26, 28).
9. On **collaboration**, we have added an expectation (paragraph 16) that regulators should collaborate to promote consistency in the interests of consumers.
10. We have also adjusted our plan for **implementation**, which we cover below.
11. We have made further drafting changes to the statement based on feedback from stakeholders, including to clarify and simplify the language of the statement. A full list of the drafting changes made to the statement is available in the annexes to the consultation response document (Annex B).
12. In the consultation response document, we set out our analysis of the responses to the consultation, and our conclusions, including why we have made changes to the statement.

Implementation

13. We expect regulators to proceed with ambition and pace. We have communicated our plans to regulators extensively over the last three years and several regulators are already undertaking work in anticipation of the statement being issued. We maintain our view that regulators should seek to meet the outcomes and expectations within 18 months.
14. We recognise that outcome 12(c) in the final statement, i.e. making interventions to ensure standards of competence are maintained, will be the most challenging outcome to achieve. It will require more complex policy development and relies first on progress on outcomes 12(a) and 12(b), i.e. setting standards of competence and determining levels of competence.

15. Therefore, we expect regulators to prioritise progress on outcomes 12(a), 12(b) and 12(d) and the relevant expectations. These should be achievable sooner than in 18 months. Progress on these outcomes will inform the work to meet outcome 12(c) and the relevant expectations. Clearly, where regulators already have evidence of competence concerns or areas of risk, we expect to see action without delay.

16. Within six months (i.e. by 31 January 2023), we expect regulators to provide us with:

- a) updates on their progress so far in meeting the outcomes and expectations; and
- b) an action plan for delivery over the remainder of the 18-month period, including milestones for meeting each of the outcomes during that time.

17. We will assess regulators' progress reports and action plans and provide feedback in early 2023.

18. From 2023, we will monitor regulators' work through the revised regulatory performance framework. The consultation on changes to our regulatory performance framework closed on 1 July. In our proposed framework, we set out that regulators should comply with LSB rules, guidance and policy statements. Subject to changes through the consultation, we expect that we will conduct the first assessments of the regulators under the new framework, including this policy statement, in summer 2023.

Next steps

19. We will issue the statement of policy in July 2022 and publish it alongside the consultation response document.

20. We will engage with the regulators to ensure progress is made swiftly and expect to receive formal progress reports by 31 January 2023.

Risks and mitigations	
Financial:	N/A
Legal:	There is an element of legal risk in developing new policy of this nature. Colleagues have taken steps to minimise this risk.
Communications and engagement:	We have engaged extensively with the sector during the consultation process. We have set out a summary of submissions to the consultation and our response in the consultation response document.
Equality and diversity:	We have set out an equality impact assessment in the consultation response document relating to both consumers and providers.
Resource:	N/A

Annexes

Annex A – Statement of policy on ongoing competence

Annex B – Statement of policy on ongoing competence: consultation response document

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Annexes A, B	S22 – future publication	N/A