

# Statement of policy – ongoing competence

Issued under section 49 of the Legal Services Act 2007

28 July 2022

## Purpose of this document

1. This statement of policy is issued under section 49(2) of the Legal Services Act 2007 (Act) and in preparing it the Legal Services Board (LSB) has had regard to the principle that its principal role is the oversight of approved regulators under Section 49(3) of the Act.<sup>1</sup>
2. The purpose of this statement of policy is to set expectations of the regulatory bodies (regulators) in the interests of the public and consumers. These expectations relate to ongoing competence, which in this context means the necessary and up-to-date skills, knowledge, attributes and behaviours to provide good quality legal services.
3. In exercising or deciding whether to exercise any of its functions, the LSB must have regard to any relevant statement of policy published under section 49 of the Act. This statement of policy on ongoing competence is likely to be most applicable to:
  - a. The maintenance and development of standards in relation to the regulation by regulators of persons authorised by them to carry on reserved legal activities under section 4 of the Act;
  - b. The maintenance and development of standards in relation to the education and training of persons so authorised, under section 4 of the Act;
  - c. The approval of changes to a regulator's regulatory arrangements in accordance with section 20 and Part 3 of Schedule 4 to the Act; and
  - d. Enforcement functions under sections 31 to 45 and 76 of the Act.
4. The LSB will also have regard to regulators' compliance with this statement of policy in discharging its other oversight functions, including in its assessment of regulators under the regulatory performance assessment framework.
5. In discharging its functions, the LSB must, so far as is reasonably practicable, act in a way which is compatible with the regulatory objectives and which it considers most appropriate for meeting those objectives. This statement of policy is relevant to all the regulatory objectives, and in particular the following:

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/2007/29/contents>.

- a. Protecting and promoting the public interest;
  - b. Supporting the constitutional principle of the rule of law;
  - c. Protecting and promoting the interests of consumers;
  - d. Encouraging an independent, strong, diverse and effective legal profession; and
  - e. Promoting and maintaining adherence to the professional principles.
6. In developing this statement of policy, the LSB has had regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent, and targeted only at cases in which action is needed, under section 3(3)(a) of the Act.
7. This statement of policy takes into account the LSB's Guidance on regulatory arrangements for education and training, issued under section 162 of the Act, which refers to ongoing competency requirements in the outcomes.<sup>2</sup>
8. The provisions of the Act, and any rules made under those provisions, will prevail over this statement of policy.
9. The LSB may review this statement of policy and issue a revised version if its policy changes.

## LSB statement of policy – ongoing competence

10. Consumers should be able to trust that legal professionals have the necessary and up-to-date skills, knowledge, attributes and behaviours (i.e. are competent) to provide good quality legal services. It is regulators' responsibility to assure themselves that those they regulate remain competent throughout their careers and that risks to consumers from harm caused by poor competence are avoided.
11. The LSB will have regard to the outcomes, expectations and considerations set out below in discharging its functions set out in paragraphs 3 and 4.

## Outcomes

12. Regulators must pursue the following outcomes:

- a. Set the standards of competence that authorised persons should meet at the point of authorisation and throughout their careers.
- b. Regularly determine the levels of competence within the profession(s) they regulate, and identify areas where competence may need to be improved.
- c. Make appropriate interventions to ensure standards of competence are maintained across the profession(s) they regulate.
- d. Take suitable remedial action when standards of competence are not met by individual authorised persons.

13. The LSB recognises that regulators regulate different professions, reserved legal activities<sup>3</sup> and authorised persons<sup>4</sup> (including both individuals and entities), and, as a consequence, may adopt different approaches to pursue the stated outcomes.

14. In pursuing the outcomes, regulators should have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.

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<sup>3</sup> Reserved legal activity means (a) the exercise of a right of audience (b) the conduct of litigation (c) reserved instrument activities (d) probate activities (e) notarial activities (f) the administration of oaths (s12 of the Act).

<sup>4</sup> 'Authorised person' means (a) a person who is authorised to carry on a reserved legal activity by an approved regulator or (b) a licensable body authorised to carry on a reserved legal activity by a licensing authority (s18 of the Act).

15. In pursuing the outcomes, regulators should be alert to risks to the public and consumers, including where:

- a. the consequences of competence issues would be severe;
- b. consumers are in vulnerable circumstances; or
- c. the likelihood of harm to the public from competence issues is high.

16. In pursuing the outcomes, regulators should identify and use opportunities to collaborate with each other in order to promote consistency in the interests of consumers.

### Expectations and considerations

17. In implementing this statement of policy, the LSB has expectations of the regulators in pursuing the outcomes at paragraph 12, which are set out in this section.

18. The LSB expects regulators to demonstrate that they have met the expectations set out within this section. Regulators must be able to demonstrate that evidence-based decisions have been taken to determine what measures are appropriate to implement for their authorised persons.

19. This section also sets out examples of measures, i.e. considerations, that regulators should consider in determining how to meet the outcomes and expectations. The LSB expects regulators to take account of the considerations in determining how to meet the outcomes and expectations.

### Setting the standards of competence

20. In pursuing outcome 12(a), regulators must develop a competence framework or equivalent that clearly states what skills, knowledge, attributes and behaviours ('competencies') they expect authorised persons to have at the point of authorisation and throughout their careers.

21. In doing so, regulators should consider:

- a. Core competencies that authorised persons should have, such as knowledge of basic legal principles, client care and practice management.
- b. Competencies around ethics, professional conduct and standards that ensure public confidence in the legal professions.

- c. Specialist competencies that particular authorised persons should have, for example, in their role as advocates.
- d. Recognition that competence varies according to circumstances, and authorised persons may need competencies depending on factors such as:
  - job role;
  - area of practice;
  - stage of career;
  - changes to the law;
  - changes to consumer expectations.

### Determining levels of competence in the professions

22. In pursuing outcome 12(b), regulators must put in place measures to routinely collect relevant information about the competence of their authorised persons. This should contribute to their determination of levels of competence across the profession(s) they regulate, and their understanding of areas of risk or where competence may need to be improved.

23. Regulators must determine appropriate arrangements for collecting relevant information.

24. In determining what is relevant information, regulators should consider:

- a. Information from their regulatory activities, for example, regulatory returns, first-tier complaints and thematic reviews.
- b. Information from supervisory activities such as spot checks, audits, file reviews or equivalent oversight checks.
- c. Feedback from, including but not limited to, consumers/users, intermediaries, supervisors, peers and judiciary.
- d. Information from other agencies such as the Legal Ombudsman, disciplinary tribunals and government agencies that have relevant data.

### Making interventions to ensure standards of competence are maintained

25. In pursuing outcome 12(c), and taking into account evidence gathered in pursuing outcome 12(b), regulators must put in place effective measures to ensure standards of competence are maintained across the profession(s) they regulate.

26. In doing so, regulators should consider a range of measures, such as:

- a. Effective communication and engagement with the profession(s) they regulate to draw attention to key risks and areas where competence may need to be improved.
- b. The promotion of reflective practice and use of feedback, including in pre-authorisation education and training, to identify learning and development needs.
- c. Specifying training, learning and development requirements (including mandatory requirements).
- d. Competence assessments, for example, observation or examinations.
- e. Reaccreditation models (i.e. requiring periodic proof of competence to maintain a practising certificate).

### Taking remedial action in response to competence issues

27. In pursuing outcome 12(d), regulators must develop an approach that provides for appropriate remedial action to be taken to address competence issues. Remedial action in this context means measures intended to support authorised persons to improve or correct competence issues.

28. In doing so, regulators should consider:

- a. What the most appropriate measures are; for example, requiring a period of supervised practice, or requiring specific training to be completed satisfactorily.
- b. What evidence they will rely on to verify the competence issue.
- c. What factors they will use to determine that remedial action is suitable to address the competence issue, including reference to any aggravating or mitigating factors.
- d. What factors they will use to determine the most appropriate remedial action.
- e. How they will follow up the competence issue to prevent recurrence.