

Statement of policy on ongoing competence – response to consultation

The LSB's response to its consultation and decision on
a statement of policy on ongoing competence

Contents

Executive summary	3
Background	5
Summary of consultation responses and LSB response	8
Equality impact assessment.....	22
Impact assessment	23
Next steps	24
Annex 1: Changes to the draft statement of policy	25
Annex 2: Responses to the consultation	30
Annex 3: Summary of potential measures.....	32

Executive summary

1. The Legal Services Board (“LSB”) is the oversight regulator for legal services in England and Wales. It is responsible for regulating the approved regulators of legal services and the regulatory bodies (“regulators”) to whom some have delegated their regulatory functions. The LSB was established by the Legal Services Act 2007 (“the Act”), which provides that in discharging its functions, the LSB must comply with, and thus promote, the regulatory objectives.
2. In 2018, we identified ongoing competence as one of our five-year priority policy objectives and set out that we would seek to understand regulators’ current arrangements around ensuring ongoing competence of authorised persons and whether they were appropriate. The work is intended to promote the regulatory objectives, in particular to protect and promote the public interest and the interests of consumers.
3. We are issuing a statement of policy on ongoing competence under Section 49 of the Act. This statement of policy sets out expectations of what the regulators should do to provide assurance that authorised persons remain competent throughout their careers.
4. This document sets out the LSB’s response to the consultation on a draft statement of policy, which was published on 8 December 2021 and closed on 7 March 2022. The [statement of policy](#) is available on the LSB’s website.
5. The LSB will have regard to the statement of policy in carrying out its functions, including its oversight function in assessing regulators under the regulatory performance assessment framework.

What we did

6. On 8 December 2021, we published a draft statement of policy¹ alongside a consultation document². This followed a significant programme of work between 2019-2021, including a call for evidence that gathered information about the arrangements for ongoing competence in the legal services and other professional sectors and jurisdictions. We also commissioned research into approaches to ongoing competence adopted in other jurisdictions and consumer research into public attitudes to ongoing competence, and we engaged with a wide range of stakeholders.

¹ <https://legalservicesboard.org.uk/wp-content/uploads/2021/12/Ongoing-competence-draft-statement-of-policy-December-2021.pdf>.

² <https://legalservicesboard.org.uk/wp-content/uploads/2021/12/Ongoing-competence-consultation-paper-December-2021.pdf>.

7. In keeping with the high level of engagement we have had on this work, we received 43 responses to the consultation. This includes responses from the regulatory bodies and approved regulators, consumer groups, professional bodies, academics and regulators in other sectors. A list of the respondents is at Annex 2 and the responses can be found on the LSB website.³

Responses to the consultation

8. This document sets out our consideration of the main issues raised by the consultation responses and our conclusions.
9. Respondents supported the intentions behind the draft statement and there was widespread agreement that it is important for the legal services regulators to have assurance of the ongoing competence of authorised persons. It was agreed that this is crucial for maintaining consumer trust and confidence in the profession. Consumers should be able to rely on authorised persons having the necessary and up-to-date skills, knowledge, attributes and behaviours (i.e. are competent) to provide good quality legal services.
10. There were some concerns expressed about how we had set out specific expectations of what regulators should do and consider doing when determining how best to gather evidence and make interventions to ensure standards of competence are maintained.

Changes we have made

11. We have carefully considered all the responses received and the issues raised by respondents. As a result, we have made changes to the draft statement of policy and the plan for its implementation.
12. The main changes are in the following areas:
- **Proportionality:** We have clarified what regulators must do to meet our expectations. Separately we have clarified what are included in the statement of policy as examples of measures that the regulators should consider in determining how to meet the outcomes and expectations.
 - We have also clarified that regulators are only expected to justify why they are adopting their particular regulatory approach on the basis of evidence gathered on levels of competence, rather than justify why they are not implementing measures that we suggest that they consider.

³ <https://legalservicesboard.org.uk/our-work/consultations-2/closed-consultations-1/closed-consultations-april-2021-2022>.

- We have emphasised the need for regulators to 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.
- We have emphasised that regulators should be alert to risks to the public and consumers.
- **Collaboration:** We have set an expectation that regulators should collaborate to promote consistency in the interests of consumers.
- **Implementation:** We have clarified our approach to regulators meeting the outcomes and expectations within 18 months (i.e. by January 2024). We expect regulators to provide us with a progress report within six months (i.e. by the end of January 2023), as well as an action plan covering the remainder of the 18-month period.

13. We have made other drafting changes for consistency and clarity. A full list of changes to the draft statement is at Annex 1.

Background

About the Legal Services Board

14. The LSB is the independent body that oversees the regulation of legal services in England and Wales. The Act provides that in discharging its functions, the LSB and approved regulators must, so far as is reasonably practicable, comply with and thus promote the regulatory objectives.⁴ The LSB oversees the approved regulators, some of which have delegated their regulatory functions to independent regulatory bodies (“regulators”).⁵
15. Section 49(2) of the Act provides for the LSB to prepare and issue a statement of policy on any matter and, in preparing it, have regard to the principle that its principal role is the oversight of the approved regulators. The LSB must have regard to any relevant statement of policy in exercising or deciding whether to exercise any of its statutory functions. Under section 50 of the Act, before publishing a statement of policy, the LSB is required to invite representations on a draft of the statement.

⁴ LSB (2017), [Regulatory objectives \(legalservicesboard.org.uk\)](https://legalservicesboard.org.uk/regulatory-objectives)

⁵ LSB [Approved regulators | The Legal Services Board](#)

LSB's work on ongoing competence

16. In September 2018, the LSB identified ongoing competence as one of its five-year priority policy objectives. The aim of our ongoing competence work has been to understand if regulators have appropriate frameworks in place to ensure that the authorised persons they regulate remain competent throughout their careers and if not, what should change.
17. For these purposes, we have defined 'competence' as having the necessary and up-to-date skills, knowledge, attributes and behaviours to provide good quality legal services.
18. We see this work as particularly relevant to the following regulatory objectives:
 - Protecting and promoting the public interest
 - Protecting and promoting the interests of consumers
 - Supporting the constitutional principle of the rule of law
 - Encouraging an independent, strong, diverse and effective legal profession; and
 - Promoting and maintaining adherence to the professional principles.
19. We carried out an extensive call for evidence in 2020, alongside desk research and a wide programme of stakeholder engagement. A findings report summarising the key themes was published in February 2021.⁶
20. Later in 2021, we published an independent report from Hook Tangaza on approaches to assuring ongoing competence in other legal jurisdictions.⁷ We also conducted qualitative and quantitative research into the public's confidence in the current arrangements for assuring the ongoing competence of authorised persons.⁸
21. Through our work, we identified that while legal services regulators have comprehensive measures to ensure authorised persons are competent upon entry to the profession, there are few routine formal measures to ensure ongoing competence, besides the widespread adoption of continuing professional development activity ("CPD").

⁶ <https://www.legalservicesboard.org.uk/wp-content/uploads/2021/02/Findings-report-OC-Feb-2021-Final.pdf>.

⁷ <https://legalservicesboard.org.uk/wp-content/uploads/2021/05/International-approaches-to-Ongoing-Competence.pdf>.

⁸ <https://legalservicesboard.org.uk/research/ongoing-competence-in-legal-services-research-into-public-attitudes>.

22. We consider that CPD can be a valuable learning and development tool to support ongoing competence, but it cannot be used in isolation if regulators are to have meaningful assurance of the ongoing competence of the professionals they regulate.
23. Through the call for evidence, stakeholder engagement and other work, we have concluded that some consumers are at greater risk of harm due to vulnerability or other circumstances. Yet limited objective data on the quality of legal services is collected or published. We gathered anecdotal evidence of risk and harm due to quality concerns or poor competence in certain practice areas, including immigration and asylum, criminal advocacy and conveyancing.
24. None of the regulators have comprehensive and up-to-date information to establish the levels of competence of their authorised persons after the point of qualification. Therefore, we consider that regulators are not yet able to identify the necessary measures to ensure ongoing competence that are targeted to areas of risk or harm.
25. Our consumer research shows that consumers expect that there are more robust checks in place. When provided with information about existing arrangements, the majority of the public thinks regulators should adopt more specific measures to ensure ongoing competence. Through our call for evidence, we identified other ongoing competence measures that are used albeit inconsistently in legal services, such as feedback mechanisms and peer reviews.
26. In July 2021, the LSB Board approved the development of a statement of policy to set out the LSB's expectations on ongoing competence. We have worked closely with a wide range of stakeholders in preparing this statement. Our policy development has been based on our independent analysis of the sector, informed by our stakeholder engagement and research.
27. On 8 December 2021, we published our consultation on the draft statement of policy. The consultation closed on 7 March 2022. This is our response to that consultation.

Summary of consultation responses and LSB response

28. We received 43 responses to the consultation from a mix of the regulatory bodies, approved regulators, consumer groups, representative bodies, academics and other stakeholders. We also met with various stakeholders during the consultation window and organised and attended events to hear specifically from authorised persons about our proposals.
29. We are grateful to all the respondents who took the time to respond to our consultation and we have taken account of all the responses and stakeholder engagement in conducting our analysis.
30. We welcome the quality of responses to our consultation. After considering the responses, we remain of the view that it is important to set a statement of policy on ongoing competence. This provides the regulators and other stakeholders with a clear understanding of the LSB's expectations and will provide a stronger framework against which to measure regulators' progress in ensuring authorised persons remain competent throughout their careers.
31. It was widely agreed in consultation responses that it is important for the legal services regulators to have assurance of ongoing competence and that this is crucial for maintaining consumer trust and confidence in the profession. Many respondents agreed with each of the four draft outcomes we had identified, i.e. that regulators should define the standards of competence they expect, gather information to determine levels of competence, and put in place measures, both preventative and remedial, to address any areas of concern and to ensure standards are maintained.
32. Some respondents welcomed the flexibility provided by the high-level approach in the draft statement. We prepared the statement with this in mind, in order to allow each regulator wide scope to design its own measures, according to the make-up of its regulated community and the needs of the consumers of its regulated community.
33. Respondents provided a range of suggestions for measures that regulators could implement, including some already practised in the legal services sector or elsewhere. We have included a summary of these measures at Annex 3 to give a sense of the variety of responses received. This should serve as a resource that regulators may find helpful in developing their approaches.
34. The final [statement of policy](#) is published on the LSB's website. All non-confidential responses have been published on our website here.⁹ At Annex 1,

⁹ <https://legalservicesboard.org.uk/our-work/consultations-2/closed-consultations-1/closed-consultations-april-2021-2022>.

we set out the drafting changes we have made in preparing the final statement of policy.

35. The following section sets out the main issues raised by respondents by theme, followed by our response and any resulting changes we have made to the statement.

Proportionality

What respondents said

36. Many respondents said that any measures implemented by the regulators needed to be proportionate and targeted according to the level of risk (SRA, BSB, IPReg). Some respondents raised concerns about whether our approach provided for this, particularly in setting draft outcome (c)¹⁰ and related expectations on measures the regulators could implement when making appropriate interventions to ensure standards of competence are maintained.

37. There were several points raised here:

- Some said that the LSB had not provided evidence of widespread incompetence or lack of competence, and therefore further measures were not justified. (Bar Council¹¹, Council of the Inns of Court (COIC)¹², Commercial Bar Association (COMBAR), Personal Injury Bar Association, Faculty Office).
- Some said that it was not reasonable to set expectations that regulators should have to justify why they were not implementing particular measures (COIC, CLSB, Professor Mayson).
- Some respondents said that some of the regulators already meet all the outcomes, and therefore no further action is required (Faculty Office, Chancery Bar, City of London Law Society, CIPA, CITMA, Society of Scrivener Notaries).
- CLSB said that the wording of the outcomes was too prescriptive.

¹⁰ 'Make appropriate interventions to ensure standards of competence are maintained across the profession(s) they regulate.'

¹¹ The Western Circuit submitted a separate response to the consultation noting that it endorsed and supported the Bar Council's response.

¹² Gray's Inn submitted a separate response to the consultation recording its support for the COIC response.

38. The Bar Council raised a concern about the drafting of outcome (b)¹³ in the draft statement of policy that regulators' 'assess' levels of competence. It questioned whether this meant that regulators would be required to conduct formal assessments (i.e. examinations) to get assurances of competence.

Our response

39. We agree that regulators should take an evidence-led approach and any new interventions adopted should be proportionate and targeted to the risks to consumers. We do not, however, support the argument that no action is required because of a lack of evidence on levels of poor competence.

40. One of the key challenges we are seeking to address is the obvious evidence gap in the sector which has been identified through our own evidence gathering and engagement with stakeholders. We do not consider that any of the regulators can currently provide assurance that they meet the outcomes, because they do not have a comprehensive understanding of levels of competence across their regulated professions.

41. A gap in evidence does not mean that there are no competence issues, or risk of harm to consumers. We proposed the draft outcome (b) specifically to address this issue, and place firm expectations on the regulators to gather specific information on competence and/or do more with the information they currently collect to inform their determination of levels of competence.

42. Furthermore, regulators should not just be relying on what information is currently available. Rather, they should be looking at where there are gaps, what types of data or information are needed to fill those gaps, and how to gather that information.

43. Beyond the existing evidence gap, we expect that regulators should be more cognisant of the risk that an authorised person's skills and knowledge may become out-of-date, which is a point that was raised by some respondents (JUSTICE, Just for Kids Law, ICAEW). This could be due to changes affecting the profession (e.g. to legislation, practice) and the wider world (e.g. changes in consumer behaviour or technology).

44. The LSB and the regulators have a statutory duty to protect the interests of consumers and that encompasses providing protections so that all consumers can be confident that the authorised persons they have engaged are competent. Indeed, poor competence in some practice areas could have significant and damaging impacts on those using the service (Just for Kids Law, Transform

¹³ 'Regularly assess and understand the levels of competence within the profession(s) they regulate and identify areas where competence may need to be improved.'

Justice). Declining confidence in the profession also might mean fewer consumers obtain the legal services they need to resolve an issue, thereby reducing overall access to justice and acting contrary to the public interest.

45. Such impacts can be mitigated by the approaches of authorised persons. We have recently published research into consumer vulnerability¹⁴ and the findings show that how authorised persons deliver their services can aid those consumers who are vulnerable due to their particular circumstances. Participants in the research recommended that there should be greater consistency and standardisation in how legal services are delivered and that authorised persons should adopt an inclusive design approach, with services being designed with the most vulnerable in mind to benefit everyone.
46. Regarding outcome (c), our intention in preparing the draft statement was that regulators should act on the evidence that they gather about areas where competence may need to improve and take a proactive approach in implementing interventions to ensure standards of competence are maintained.
47. Our chief expectation is that regulators put in place measures that are effective at maintaining standards of competence. Regulators should be able to provide assurance to their regulated community, the public and other stakeholders that they have identified such measures as necessary and appropriate to maintain those standards.
48. In the 'expectations' section of the draft statement of policy, there were certain activities which we proposed that all regulators should undertake and separately examples of measures that regulators should consider in determining their approach. The policy intention was not to require every regulator to undertake all these measures. Instead, we expected regulators to consider the relevance of these in determining what measures to implement for their regulated community. We recognise from the responses that the draft statement was not sufficiently clear.
49. Regarding outcome (b), our intention in preparing the draft statement was that regulators must take steps to ensure that they have a good understanding of the levels of competence in their regulated community. In gathering information, we consider that regulators should take a risk-based approach. This might, in certain circumstances, entail carrying out formal assessments of some authorised persons if appropriate, but it is not our intention that all regulators must carry out formal examinations of all authorised persons.

¹⁴ <https://legalservicesboard.org.uk/news/lsb-research-highlights-the-need-for-the-legal-sector-to-provide-better-support-to-vulnerable-consumers>.

Changes to the statement

50. We have added paragraph 14 to the final statement, which sets out that regulators should take account of the principles that regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed. Regulators are already expected to take account of these principles, as set out in section 28(3) of the Act. The inclusion of this paragraph provides an additional safeguard against regulators introducing burdensome interventions that are disproportionate.
51. Paragraph 24 of the draft statement has been moved up to become paragraph 15 of the final statement so that it applies to all outcomes and expectations, rather than only outcome (b). This better reflects our policy intent, and addresses feedback from respondents, namely that regulators should be alert to risks to the public and consumers in relation to each of the outcomes and expectations.
52. In order to clarify what expectations the regulators must meet, and what measures the regulators may only consider, we have:
- Set out the expectations that regulators must meet in boxes to emphasise their importance.
 - Amended draft paragraphs 15-17 (now final paragraphs 17-19) to reflect that the statement contains both mandatory expectations and points for consideration.
 - Removed draft paragraphs 20-21, 25-26, 28-29 and 33-34.
 - Amended draft paragraphs 22-23, 27 and 30-32 (now final paragraphs 22-23, 25 and 27) to clarify our expectations under outcomes (b), (c) and (d).
53. On outcome (b), we have amended draft paragraphs 13(b) and 22 (now final paragraphs 12(b) and 22) and the heading under outcome (b), so it is clearer that information-gathering should contribute to regulators' determination of levels of competence, rather than a specific assessment.

Collaboration

What respondents said

54. Respondents were supportive of collaboration where this would help ensure consistent standards for consumers and professionals across the sector (JUSTICE, SRA). On competence frameworks specifically, some said that the LSB should lead on identifying those shared competencies common to all regulators (CRL, City of London Law Society).

55. Some other specific areas of collaboration were suggested:

- Regulators should develop a shared understanding of what good reflective practice looks like and how to make the best use of feedback (Beyond Compliance, STEP, TLS).
- A consistent approach to remediation would be helpful so it is clear what the threshold for intervention is (JUSTICE).

Our response

56. Given the fragmented nature of the market and multiple regulators operating, we consider that consistency of approach by regulators, where appropriate, will support the consumer interest. This would provide certainty on the standards of authorised professionals regardless of their regulator. It could also help to reduce consumer confusion and simplify professionals' understanding of regulators' requirements.

57. As we have set out in the statement of policy, we recognise that each regulator operates in a unique set of circumstances and a single approach across the regulators may not be possible or desirable. We note the work from the SRA, BSB and CRL, who worked together on guidance and resources for professionals in the Coroners' Courts and Youth Courts, could be a useful model.¹⁵

58. There are other recent examples of good collaboration between all the regulators, including the agreement of the joint statement on tackling counter-inclusive misconduct through disciplinary practices.¹⁶ We consider that where some regulators already have more developed approaches to meeting the outcomes and expectations, it would be helpful for others to consider how those models might provide examples of good practice in their own areas of the profession.

Changes to the statement

59. Therefore, we have added a new paragraph 16 to set an expectation that regulators should collaborate where consistency is in the best interests of consumers. Such collaboration should help to align approaches and ensure that regulators are taking appropriate action that is in the consumer interest.

¹⁵ See resources including: <https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/youth-court-advocacy/>; <https://www.barstandardsboard.org.uk/for-barristers/compliance-with-your-obligations/what-do-i-have-to-report-or-tell-to-the-bsb/registration-of-youth-courts-work.html>; <https://cilexregulation.org.uk/regulated-individuals/coroners-court/>.

¹⁶ <https://legalservicesboard.org.uk/wp-content/uploads/2022/06/Tackling-counter-inclusive-misconduct-statement-FINAL.pdf>.

Implementation

What respondents said

60. Many respondents said it would not be possible to meet all the outcomes and expectations within 18 months (BSB, CRL, ICAEW, CLSB, Government Legal Department). E3 Training suggested that the LSB could commit the regulators to an intermediate milestone, with a consultation or published delivery plan.
61. Some regulators noted existing programmes of work they are undertaking relating to ongoing competence, for example ICAEW's review of CPD and IPReg's ongoing review of regulatory arrangements. CLC said that any reforms would need to be communicated carefully across the sector.
62. The LSCP noted the importance of ensuring that regulators take action as quickly as possible, including prioritising areas where there is already evidence of harm or risk to consumers.
63. Some respondents wanted more clarity on how the LSB would enforce its expectations to ensure that the regulators take action (TLS, Transform Justice).

Our response

64. After carefully considering the responses, we maintain our view that regulators should proceed with ambition and pace. This should reflect the importance of ongoing competence in promoting the regulatory objectives, ensuring consumers are protected from harm and maintaining public trust and confidence in legal services. We also note that some regulators are already undertaking work to meet the outcomes and expectations, in anticipation of the final statement being issued.
65. We recognise that outcome (c) and related expectations will be most challenging to achieve. It will require more complex policy development and relies first on progress on outcomes (a)¹⁷ and (b).

Changes to implementation and monitoring

66. We maintain our view that regulators should seek to meet the outcomes and expectations within 18 months of publication of the statement. We expect regulators to prioritise progress on outcomes (a), (b) and (d) and the relevant expectations and consider these should be achievable sooner than in 18 months' time of the statement being issued. Progress on these outcomes will inform the work to meet outcome (c) and the relevant expectations. We consider

¹⁷ 'Set the standards of competence that authorised persons should meet at the point of authorisation and throughout their careers'.

this is achievable given the clarity we have provided around outcome (c) and the relevant considerations.

67. Within six months of the statement of policy being issued, we expect regulators to provide us with an update on their progress so far in meeting the outcomes and expectations, and an action plan for delivery over the remainder of the 18-month period. This should include milestones for meeting each of the outcomes during that time. We will assess regulators' progress reports and action plans and provide feedback in early 2023.

68. From 2023, we will monitor regulators' work through the revised regulatory performance framework. Our 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. This includes any policy in relation to ongoing competence, so that regulators can provide assurance of the competence of the authorised persons they regulate.¹⁸ Subject to changes through the consultation, we expect that we will conduct the first assessments of the regulators under the new framework, including this statement of policy on ongoing competence, in summer 2023.

69. We note that there are some areas where regulators already have evidence of competence issues that should be addressed through targeted interventions. Some respondents drew attention to areas of known risk or harm, e.g. criminal advocacy, conveyancing, immigration and asylum, and will-writing and probate (LSCP, Citizens Advice, Professor Mayson, OISC). This follows similar areas being identified in our call for evidence¹⁹ (responses from Law Centres Network, the Legal Ombudsman).

70. Clearly, where regulators already have such evidence, we expect to see them acting to address known concerns without delay.

Designing preventative and remedial measures

What respondents said

71. Submissions raised some issues around how some specific interventions would work in practice, in relation to outcome (c). These included:

- How to conduct peer reviews in areas with fewer practitioners (e.g. trade mark attorneys, costs lawyers).

¹⁸ <https://legalservicesboard.org.uk/wp-content/uploads/2022/04/Regulatory-performance-assessment-framework-consultation-document-2022-LSB.pdf>.

¹⁹ <https://legalservicesboard.org.uk/wp-content/uploads/2021/02/Findings-report-OC-Feb-2021-Final.pdf>

- How to treat confidential information (COIC, CIPA, CLSB) and concerns about legal privilege (COMBAR).
- Spot checks on e.g. barristers could be very costly given the variety of tasks undertaken by authorised persons (COIC).
- How to ensure appropriate measures for gathering assurance on both professionals in practice and those working in-house (CIPA), or professionals working in a practice regulated by another regulator (CRL).
- Objections to regulators introducing reaccreditation or competence assessments (CITMA, PIBA, Chancery Bar).

72. Respondents also raised concerns about how they should implement remediation:

- Several respondents said remedial activity was already practised (Chancery Bar, CLSB, Stephen Mayson, COMBAR).
- How remediation relates to the threshold for taking enforcement action (SRA).
- Whether the responsibility to oversee remediation lies with employers, managers, or the overall practice (Nottingham Law School, LawCare).
- Clarity was needed around ‘aggravating and mitigating factors’ (City of London Law Society).

73. Some stakeholders noted the importance of addressing the culture of the workplace of professionals, including factors such as what supervision is available and the impact of commercial pressures (LawCare, My Compliance Colleague, Nottingham Law School). Others said that there needs to be a change in culture in legal services, so that there is more openness to professionals raising issues that can be dealt with prior to enforcement action from the regulator (TLS, Transform Justice).

Our response

74. Respondents raised a variety of design and implementation challenges around how to practically introduce some of the measures suggested under outcomes (b) and (c) in the draft statement of policy, as well as suggestions for how regulators might address these challenges.

75. It is not the LSB’s role to determine how each specific measure might work in practice among each regulated community. Through our extensive call for evidence, research and analysis, we have identified a range of measures in

limited use in legal services or in other sectors and jurisdictions, which could be appropriate measures to introduce. We invite the regulators to consider how these could be adapted for their purposes.

76. We have drawn on measures in healthcare regulation, such as reflective practice, following engagement with the General Medical Council and Nursing and Midwifery Council. Elsewhere, assurance visits (or spot checks) are already practised in legal services, e.g. by the Office of the Public Guardian and the Legal Aid Agency.
77. It is ultimately for the regulators to analyse the evidence they gather and determine the levels of competence among their regulated community. Following this, they should be able to determine effective measures to address any concerns around the ongoing competence of those practitioners, and to ensure standards are maintained.
78. These could be a mix of preventative and remedial measures, for example reflective practice, mandatory training, learning and development activities and/or competence assessments. We would encourage regulators to consider how other sectors and jurisdictions assure ongoing competence approaches, including how they have overcome design and implementation challenges similar to those raised by respondents. We welcome suggestions from stakeholders on how to address challenges; many of these are set out at Annex 3 and might be helpful for the regulators.
79. As set out above, we do not consider that the current system, which is reliant on CPD, is effective at assuring ongoing competence. While CPD is a valuable tool for learning and development, the research we commissioned from Hook Tangaza highlighted the limitations with CPD, for example the lack of clear reasoning as to why CPD should be done and how many hours or points should be completed.²⁰
80. Furthermore, the findings from our consumer research showed that the current measures, which rely on CPD, do not give consumers sufficient confidence that authorised persons remain competent throughout their careers. Indeed, 87% of respondents agreed that regulators should do more to reduce the risk of a lack of competence undermining public trust in the legal system.
81. When informed about the different tools with partial coverage in legal services, which are used more systematically in other sectors, consumers were supportive of a range of these being used in legal services, e.g. mandatory CPD requirements, a process of audit and spot checks and/or recertification. We are not suggesting the introduction of all of these measures, but regulators should

²⁰ <https://legalservicesboard.org.uk/wp-content/uploads/2021/05/International-approaches-to-Ongoing-Competence.pdf>

take account of how new measures used in combination with existing learning and development activities could instil greater confidence among consumers in the legal services sector. Some respondents advised on how CPD operates in other sectors, e.g. the Engineering Council.

82. In determining appropriate measures for their regulated community, we recognise that some regulators might want to test approaches through pilot schemes. We support the use of pilots and iterative testing where regulators can demonstrate this is an effective and efficient way to identify the best option to deliver outcomes in the interests of consumers.²¹
83. On remediation, we have observed instances of this used effectively in legal services, but not comprehensively or in a way that suggests it is clearly tied to regulators' overall interest in, and approach to, ongoing competence. Greater transparency for authorised persons, consumers and the public would be a helpful step to demonstrating this. We see remediation as a good example of where all regulators can make improvements in their approaches to assuring ongoing competence, possibly with a common approach agreed through collaboration.

Competence frameworks

What respondents said

84. Most respondents agreed that it would be appropriate for each regulator to establish a competence framework for their own regulatory regime (seeking to ensure consistency with other regulators where appropriate as discussed above). Some noted that common core competencies would be difficult to identify due to the diversity of the profession (OISC).
85. CILEx Regulation and the Society of Licensed Conveyancers said that the LSB should further consider the pros and cons of competence frameworks by specialism or profession. The Notaries Society said there could be shared core competencies for certain reserved activities, e.g. for probate and conveyancing.
86. Some suggested that the LSB define some core competencies that should be included in each competence framework (CRL, ACSO). Some suggested certain criteria that should be included as a minimum in a competence framework, for example around reflective practice and soft-skills (Beyond Compliance) and mental health and wellbeing (LawCare).

²¹ We have noted for example this pilot in family courts:

<https://www.lawgazette.co.uk/news/investigative-approach-piloted-in-family-courts/5111771.article>

Our response

87. We remain of the view that each regulator is best placed to set their own competence framework. A single framework for all authorised persons working across such diverse areas might feel so generic as to apply to all professional services, rather than the law specifically. We reiterate our view that collaboration should be sought where most effective and a good opportunity might be to agree common competencies in frameworks where authorised persons carry out the same activities, e.g. advocacy or conveyancing.
88. On the other features suggested, we agree these are useful suggestions that regulators could take account of in designing their frameworks. The statement of policy is intended to be flexible and high-level, giving each regulator discretion to design their own competence framework according to the make-up of its regulated community and the needs of consumers.
89. In 2022/23, we intend to review our guidance on education and training, which was published in 2014.²² As part of this work, we want to ensure that the guidance takes account of the significant developments in legal services qualifications and is aligned with the statement of policy on ongoing competence.

Collecting information

What respondents said

90. Many respondents agreed that the types of information we had identified in the consultation paper were the right sources that regulators should use to gather evidence on levels of competence. Some said that adequate information was already being collected and used (Faculty Office, CITMA). Nottingham Law School said that there should be a clear link between the regulator's competence framework and what evidence a regulator would use to prove if the standards are being met.
91. Some respondents wanted more prescription setting out what types of information must be collected and how. For example, Transform Justice said that the LSB should require all firms to have in place a system which gives clients the opportunity to give feedback at the end of a case. Citizens Advice said that the timeframes for collecting information should be specified, with certain information, e.g. complaints data, collected more frequently.

²²

http://legalservicesboard.org.uk/what_we_do/regulation/pdf/20140304_LSB_Education_And_Training_Guidance.pdf.

92. Some respondents raised issues about the use of feedback, with TLS and Nottingham Law School suggesting regulators look to the medical professions where feedback processes are already in place.

Our response

93. We welcome the consensus that the types of information we have identified are appropriate and relevant. We also welcome the additional suggestions and have set some of these out at Annex 3, which may be useful to the regulators. As set out in the statement itself, it is important for regulators to consider the best approach for gathering information, so that they efficiently collect useful information in a way that is not unnecessarily burdensome on the profession or consumers.

94. We have chosen not to prescribe the types of information regulators should collect and how frequently. This is consistent with our overall intent that the statement of policy is permissive, allowing regulators to adopt different approaches as appropriate for the authorised persons they regulate. We expect regulators to set out in their progress update and action plans what evidence they will draw on to determine levels of competence and meet the expectations in the policy statement.

95. The LSB will also be a resource, supporting regulators to access data and information, such as:

- A wider range of data on PII claims, as part of our work elsewhere on financial protections for consumers.
- We have been working with HM Land Registry alongside some of the regulators with a view to making more data on conveyancing publicly available.
- We will continue to work with the Legal Ombudsman as it provides greater transparency of its data.

96. In our statement of policy on empowering consumers²³, we have also set expectations of how regulators should ensure better provision of information for consumers on price, service and quality. It could be beneficial for regulators to look at links here with their work on transparency and identify if there are data-sources that can serve multiple purposes and therefore be more efficient in data collection.

²³ <https://legalservicesboard.org.uk/wp-content/uploads/2022/04/Statement-of-policy-on-empowering-consumers.pdf>.

Assessing impact

What respondents said

97. Some respondents expressed concerns that we had not provided sufficient analysis on the potential costs and benefits of regulators introducing new measures to assure ongoing competence, including on equality impacts (CLSB, CRL, CLC).
98. Several respondents raised points on equality impacts. Beyond Compliance noted that given those from ethnic minority groups are over-represented in SRA and BSB enforcement processes, this would likely be the same with any new measures to ensure ongoing competence. STEP said that given concerns about ethnic minority groups being unfairly targeted, regulators' monitoring should seek to eliminate this risk through evidence-based interventions.
99. CRL said that increased regulation would lead to higher costs for regulated legal services providers, which could in turn drive consumers toward potentially cheaper unregulated legal services where available.

Our response

100. In preparing the final statement of policy, we have compiled a regulatory impact assessment and an equality impact assessment, set out below at paragraphs 106-114.
101. In the statement, we have set out the outcomes and expectations that regulators should meet by putting in place measures to provide assurance of the ongoing competence of the authorised persons they regulate. In terms of a net increase in regulation, while some regulators will likely do more overall, for others we expect this might be a matter of reprioritising and focusing resources in new areas.
102. Overall, we consider that the wider benefits of such regulation should outweigh the costs. If regulators introduce effective and proportionate measures targeted to areas of risk and based on evidence they have collected on levels of competence across the professions, this should result in greater protections for consumers, mitigating risk and reducing harm to consumers as a result of poor competence.
103. It is the role of the regulators to put in place measures that meet the expectations set out in the statement of policy. As a flexible, high-level document, the LSB is not in a position to determine the specific impacts as a result of measures that the regulators might put in place. Regulators are expected to ensure that any regulatory activities are proportionate and targeted, and we will scrutinise any applications made to us to change regulatory

arrangements. We expect these processes should safeguard against disproportionate regulation that overall is not beneficial to the consumer or public interest.

104. In relation to equality impacts, we note concerns about certain groups being over-represented in current disciplinary processes, and therefore in future processes around ensuring ongoing competence. We expect regulators to adopt approaches that seek to mitigate such risk, in line with paragraphs 14-15 of the final statement.

Other changes to the statement

105. We have also made the following changes to the draft statement of policy for clarity and consistency. We have:

- Removed draft paragraph 10, which only provided background context.
- Removed text from draft paragraph 32 around transparency, as the policy intent is now addressed by the amended paragraph 14 of the final statement.
- Amended headings reflecting drafting changes.
- Made minor drafting changes at paragraphs 1, 6, 11, 12, 13, 15, 17, 20, 21, 23-24, and 26-28 of the final statement.

Equality impact assessment

106. The LSB has given due consideration to its obligations under the Equality Act 2010, including consideration of the public sector equality duty.²⁴ We have carefully considered responses to the consultation on our draft statement of policy relating to equality.

107. We have considered comments from respondents which say that introducing measures to gather further information on authorised persons and/or to ensure that standards of competence are maintained may carry a disproportionate impact on practitioners from groups with protected characteristics (see for example paragraphs 97-99). We consider that these are important factors that regulators should take account of when they determine what measures are proportionate for their regulated community.

108. We do not consider there are any features of this framework that will inherently disproportionately affect practitioners or consumers from groups with protected characteristics. The specific impacts on authorised persons and

²⁴ GOV.UK (2012), [Public sector equality duty - GOV.UK \(www.gov.uk\)](https://www.gov.uk/public-sector-equality-duty)

consumers will follow from the specific measures that regulators introduce to ensure that they meet the expectations set out in the statement.

109. There are safeguards in place to reduce the risk of disproportionate impacts on particular groups or individuals. Where regulators put in place new regulatory arrangements, they are required to submit applications for those arrangements to the LSB for approval. As part of this process, they are required to complete an equality impact assessment, which should identify potential risks from their specific proposals and how they intend to mitigate any risks.

Impact assessment

110. The LSB has considered the likely impact of the statement of policy on the approved regulators, regulators, authorised persons and consumers. We have carefully considered the comments we received in responses during the consultation.
111. We recognise that regulators will need to put in place new regulatory arrangements to meet the outcomes and expectations in the statement of policy. Such changes in regulatory approach may potentially result in an increased burden on providers, depending on the measures regulators propose and consult on. Individual regulators are best placed to assess and quantify these impacts based on the measures they decide to pursue and make appropriate changes before implementing their proposals.
112. We have prepared a high-level statement of policy to provide regulators with flexibility to put in place the measures they deem appropriate to meet the outcomes and expectations.
113. We have 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. We consider that the statement of policy is an effective and proportionate means of ensuring the regulators have appropriate measures in place to provide the necessary assurance of the ongoing competence of authorised persons.
114. Where regulators put in place new regulatory arrangements, the LSB will have responsibility for approving these. Such proposals from the regulators will need to be justified on the basis of evidence and analysis, which will identify the specific potential impacts of specific measures put in place in order to meet the expectations and outcomes of the statement.

Next steps

115. The statement of policy comes into effect from the date of issue, i.e. 28 July 2022. By 31 January 2023, we expect regulators to provide a progress report and action plan for the following 12 months (i.e. to January 2024), by when we expect regulators to meet the outcomes and expectations in the statement. We will assess the interim action plans in early 2023 and monitor regulators' progress through our regulatory performance framework.

Annex 1: Changes to the draft statement of policy

This table sets out the substantive drafting changes we have made to the draft statement of policy.

Draft statement reference	Draft for consultation	Final statement reference	Final text
10	This statement of policy has been developed following a significant programme of work. This included a call for evidence that gathered information about the arrangements for ongoing competence in the legal services and other professional sectors, research into approaches to ongoing competence adopted in other jurisdictions, consumer research into public attitudes to ongoing competence and engagement with a wide range of stakeholders.	N/A	[removed from final statement]
13b	Regulators must pursue the following outcomes: Regularly assess and understand the levels of competence...	12(b)	Regulators must pursue the following outcomes: Regularly determine the levels of competence...
14	The LSB expects that in pursuing the outcomes, regulators will be clear on the application of their approach .	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 .

24	In pursuing the outcome 13(b), regulators must be alert to risks to the public...	15	In pursuing the outcomes, regulators should be alert to risks to the public and consumers ...
N/A	[Not in draft]	16	Regulators should identify and use opportunities to collaborate with each other in order to promote consistency in the interests of consumers.
16-17	<p>The LSB expects regulators to demonstrate that they have given consideration to all of the measures set out within this section. Regulators must be able to demonstrate that evidence-based decisions have been taken on which of these measures are appropriate to implement for those that they regulate.</p> <p>Where a regulator has determined that any of the measures identified are not appropriate to implement, the LSB expects the regulator to clearly demonstrate why such measures are not appropriate for those they regulate. Regulators must set out what alternative measure(s) they have adopted to meet the outcomes.</p>	18-19	<p>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.</p> <p>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.</p>
20-21	The LSB expects regulators to demonstrate that they have given consideration to the competencies set out in paragraph 19 and taken evidence-based decisions on which of these competencies are appropriate to be included in their competence frameworks or equivalent.	N/A	[removed from final statement]

	Where a regulator has determined that any of the competencies identified are not appropriate, the LSB expects the regulator to clearly demonstrate why and set out what alternative competencies it has adopted to meet outcome 13(a).		
22-23	<p>In pursuing outcome 13(b), regulators must adopt approaches for routinely collecting relevant information about those they regulate. This should contribute to their assessments of levels of competence across the whole of their profession(s), and how they identify areas of risk or where competence may need to be improved.</p> <p>Regulators must consider what is an appropriate and proportionate frequency to collect relevant information.</p>	22-23	<p>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.</p> <p>Regulators must determine appropriate arrangements for collecting relevant information.</p>
25-26	<p>The LSB expects regulators to demonstrate that they have given consideration to the types of information set out in paragraph 23 and taken evidence-based decisions on which of these types of information are appropriate to collect.</p> <p>Where a regulator has determined that any of the types of information identified are not appropriate, the LSB expects the regulator to demonstrate why and set out what alternative types of information it has adopted to meet outcome 13(b).</p>	N/A	[removed from final statement]

27	In pursuing outcome 13(c), regulators must adopt approaches that ensure standards of competence are maintained across the profession(s).	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 .
28-29	<p>The LSB expects regulators to demonstrate that they have given consideration to the measures set out in paragraph 27 and taken evidence-based decisions on which of these measures are appropriate to adopt.</p> <p>Where a regulator has determined that any of the measures identified are not appropriate, the LSB expects the regulator to demonstrate why and set out what alternative measures it has adopted to meet outcome 13(c).</p>	N/A	[removed from final statement]
32	Regulators must provide transparency of their approach and clearly set out the process for when and how they will take remedial action.	N/A	[removed from final statement]
33-34	<p>The LSB expects regulators to demonstrate that they have given consideration to the approaches set out in paragraph 32 and taken evidence-based decisions on which of these approaches are appropriate for those that they regulate.</p> <p>Where a regulator has determined that any of the elements identified are not appropriate, the LSB expects the regulator to demonstrate why and set</p>	N/A	[removed from final statement]

	out what alternative elements it has adopted to meet outcome 13(d).		
--	---	--	--

There are also minor drafting amendments to several headings and the following paragraphs (references to final statement): 1, 6, 11, 12, 13, 15, 17, 20, 21, 23-24 and 26-28.

Annex 2: Responses to the consultation

We received 43 responses to the consultation. Responses from the following stakeholders have been published on our website [here](#):

- Association of Consumer Support Organisations (ACSO)
- Bar Council (BC)
- Beyond Compliance
- Bar Standards Board (BSB)
- Chancery Bar
- Chartered Institute of Legal Executives (CILEX)
- Chartered Institute of Patent Attorneys (CIPA)
- Chartered Institute of Trade Mark Attorneys (CITMA)
- CILEx Regulation (CRL)
- Citizens Advice
- City of London Law Society
- Council of Licensed Conveyancers (CLC)
- Costs Lawyer Standards Board (CLSB)
- Commercial Bar Association (COMBAR)
- Council of the Inns of Court (COIC)
- E3 Training
- Engineering Council
- Faculty Office (FO)
- Government Legal Department
- Gray's Inn Barristers' Committee
- Institute of Chartered Accountants in England and Wales (ICAEW)
- Intellectual Property Regulation Board (IPReg)

- Just for Kids Law
- JUSTICE
- Law Society (TLS)
- LawCare
- Legal Services Consumer Panel (LSCP)
- Professor Stephen Mayson
- My Compliance Colleague
- Notaries Society
- Nottingham Law School
- Office of the Immigration Services Commissioner (OISC)
- Personal Injury Bar Association (PIBA)
- Society of Licensed Conveyancers
- Society of Scrivener Notaries
- Solicitors Regulation Authority (SRA)
- Society of Trust and Estate Practitioners (STEP)
- Transform Justice
- Western Circuit

We received one confidential response from a law firm, and brief responses in support of our proposals from the following:

- HM Land Registry
- Law Society of Alberta
- Professional Standards Authority

Annex 3: Summary of potential measures

Submissions from respondents included suggestions of potential approaches which regulators could consider in determining what measures they should introduce to provide assurance of ongoing competence of their authorised persons. We have discussed some of these in the main document, but this annex provides further examples of approaches that regulators might wish to explore. Examples are taken verbatim from consultation responses and LSB research reports.

We encourage regulators to consider all the submissions we received as they develop their ongoing competence approaches. All non-confidential submissions are published on our website.²⁵ Our website also has information emerging from our call for evidence and research that we commissioned, which provides further insight into the public's perspective on ongoing competence, and lessons from approaches adopted in other jurisdictions and sectors that regulators may wish to consider.²⁶

Theme	Source	Evidence
Responsibility for ensuring competence	LawCare response	<ul style="list-style-type: none">• Employers should be mindful of the culture and working practices that can undermine competence such as long working hours, work intensity, inadequate supervision, poor workplace culture and psychologically unsafe environments where professionals do not feel able to admit they are struggling or may be working beyond their competence.• Our understanding is that most complaints, insurance claims and disciplinary action against legal professionals are not related to a lack of knowledge of the law but rather a failure to maintain good communication with clients and third parties, missing deadlines, or poor case management.• In addition to assessment of competence there should be a process of identifying the risks posed by working practices and legal culture to individual legal professional competence and the steps employers and workplaces can take to mitigate these. i.e., the onus

²⁵ <https://legalservicesboard.org.uk/our-work/consultations-2/closed-consultations-1/closed-consultations-april-2021-2022>.

²⁶ <https://legalservicesboard.org.uk/our-work/ongoing-work/ongoing-competence0>.

		<p>should not be only on the individual. Any interventions and or remedial action should also be directed at firms/legal workplaces. If remedial action is to be taken against an individual then a careful assessment of mitigating factors will be essential, as there may be instances where health, working practices and other factors may have undermined competence.</p> <ul style="list-style-type: none"> • Alongside developing an ongoing framework for monitoring competence in practice there needs to be education and support for understanding competence and your professional obligations during legal education and training. Those on the educational pathway into practice and those in the early stages of their careers should have mandatory education and the opportunity to develop the skills, knowledge, attributes, and behaviour to maintain their competence during practice. Those coming into legal practice should be equipped to understand competence, how to maintain it, how it can be undermined, what support there is if they have concerns and feel able to seek help when they need it.
Competence frameworks	Beyond Compliance response	<p>https://www.beyond-compliance.co.uk/compliancematters/climbing-the-competence-ladder/.</p> <p>[Beyond Compliance] suggest inclusion of the so-called “soft skills” or “emotional competencies” of self-awareness, ability to develop interpersonal relationships, active listening, et cetera. These are skills which it is often discussed are lacking in lawyers’ training and in fact are essential for delivering better service to the consumers of legal services. These are frequently cited by [the Legal Ombudsman] as being the root cause for complaints about legal services providers.</p>
Gathering information	Legal Futures article	<p>https://www.legalfutures.co.uk/latest-news/pi-claims-leaving-some-clients-worse-off-legal-ombudsman-warns.</p>

Designing interventions	LSB research	https://legalservicesboard.org.uk/news/lsb-research-highlights-the-need-for-the-legal-sector-to-provide-better-support-to-vulnerable-consumers <ul style="list-style-type: none"> • [The LSB's research on consumer vulnerability] echoes the existing evidence that people are inherently vulnerable when they approach a legal professional, both due to their situation and because the law and legal system are hard to understand and navigate for a layperson. • Improvements suggested include the opportunity for an inclusive design approach, whereby the standard approach is based on the needs of people when they are at their most vulnerable.
Mandatory training	LawCare response	<p>There are several areas where mandatory education and training should be considered:</p> <ul style="list-style-type: none"> • Response to error –the importance of admitting mistakes early, individual, and organisational learning from mistakes, to lead to a culture in law where the response to error is not fear and blame. • Relationship between risk management and mental wellbeing • Emotional impact of working with vulnerable clients (as outlined above) • People management training for all legal professionals who supervise others • Best practice in developing a psychologically safe working environment • Emotional competence – practical skills-based training to understand the emotional impact of legal work and how to develop healthy working relationships with colleagues and clients.
Peer review	Engineering Council	<ul style="list-style-type: none"> • [The Engineering Council's CPD review process] is based around peer review: each sampled CPD record is checked by a practising assessor, with 'appropriate feedback' returned to the registrant. While this is a resource-intensive mechanism, it provides an

		<p>incentive for the registrant (feedback); and the peer-review element provides assurance that those being sampled are undertaking appropriate CPD.</p> <ul style="list-style-type: none"> • There are no input measures (e.g. hours) or qualitative thresholds expected. There is nonetheless a sanction in place for those who refuse to engage with the process. Where a registrant's CPD record shows an inappropriate level or type of CPD, the feedback mechanism would seek to change behaviours. Removal from the Register is reserved for instances where non-engagement with the process is clear and wilful. This sanction was introduced in 2020, by which time the processes, communications, and assessor experience around CPD sampling had reached the requisite levels and 'bedded in'. • The use of CPD sampling, with an emphasis on the registrant assessing his or her own development needs, reflects the fact that the Engineering Council's suite of registration titles (Engineering Technician, Incorporated Engineer; Chartered Engineer) reflect and assure a general, professional competence. This covers underpinning knowledge and understanding; good professional practices; levels of leadership, communication, ethics and sustainability; and a commitment to maintaining a level of currency in a fast-moving environment of applied science. • The more specific occupational competence, by contrast, is well-handled by individual institutions and their codes of conduct; certain contextualised sub-registers; specific licences to practice; and by employers and their career frameworks.
--	--	---