

Annual assessment of continuing competence 2023

2 August 2023

About this report

Consumers rightly expect their solicitor to be competent. Providing assurance that solicitors are competent when they first qualify, and remain competent throughout their career, is core to our work.

We welcome the Legal Services Board's statement of policy on ongoing competence outcomes [<https://legalservicesboard.org.uk/wp-content/uploads/2022/07/Final-OC-statement-of-policy-July-2022.pdf>] . It sets out that legal regulators should be able to assure themselves that the lawyers they regulate have the necessary skills, knowledge and behaviours to provide competent legal services.

This report outlines findings from our review into how solicitors keep their skills and knowledge up to date and how firms make sure they are competent to provide the legal services they offer.

We have analysed a range of information to do this, including:

- data from reports made to us alleging incompetence about a solicitor or firm
- findings from our most recent thematic reviews
- findings from our wider checks on training and supervision arrangements.

Most firms make sure their employees maintain their competence to provide competent legal services to clients. However, we know, through our work, that there are weaknesses in how some solicitors and firms maintain their competence and deliver competent legal services.

Our analysis has highlighted that certain areas of law are more likely to be the subject of a report to us. Some solicitors cannot demonstrate they have reflected on their practice and addressed identified learning and development needs. We also found a lack of awareness among some regarding their professional obligations and specific risks relating to their areas of practice.

This report is part of our enhanced approach to identifying and addressing competence concerns. We outline our approach to identifying solicitors who do not have the skills, knowledge, or behaviours to deliver competent legal services. We also set out the follow up action we will take.

Going forward, we will publish our competence findings in July each year, using the previous 12 months' information and data available to us. We will also summarise the outcomes of our previous activity to address the challenges in maintaining competence we have identified.

The content of future reports will evolve to reflect our broadening approach to assuring competence and developments in how we analyse data available to us.

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Maintaining competence

Our Statement of Solicitor Competence

[<https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/competence-statement/>] sets out the knowledge, skills and behaviours a solicitor must demonstrate, both when they qualify and throughout their careers.

Under our Code of Conduct for Solicitors, registered European lawyers and registered foreign lawyers [<https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/>], solicitors must maintain their competence to carry out their roles and keep their knowledge and skills up to date. We expect solicitors to reflect regularly on their practice and to identify and address their learning and development needs. Under our Code of Conduct for Firms [<https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/>], the firms we regulate must make sure that their managers and other employees are competent.

Solicitors must declare to us annually, as part of our practising certificate renewals, that they have reflected on their practice and addressed their identified learning and development needs. Through our work, we spot check if and how solicitors and firms have approached this.

How we identify concerns with solicitor and firm competence

We carry out a range of activities to help us identify and understand whether solicitors and firms are meeting their competence obligations. This drives where we focus our regulation.

We analyse reports made to us and wider information we hold to identify potential competence issues. This is supported by our horizon scanning programme that helps to identify future risks in the legal services market that may impact on maintaining competence.

We regularly carry out thematic reviews and inspections where we have competence concerns. We also carry these out to understand in more detail an area of practice or a type of practice setting. In addition, we have a rolling programme of inspections to check on the extent to which firms are complying with anti-money laundering (AML) regulations.

Between 2022 and 2023, we carried out thematic reviews and inspections into the following areas:

- Immigration and asylum [<https://www.sra.org.uk/sra/research-publications/immigration-asylum-thematic-review/>]
- In house solicitors [<https://www.sra.org.uk/sra/research-publications/in-house-solicitors-thematic-review/>]
- Lasting Powers of Attorney and deputyships [<https://www.sra.org.uk/sra/research-publications/lasting-powers-of-attorney-deputyships-review/>]
- Workplace culture [<https://www.sra.org.uk/sra/research-publications/workplace-culture-thematic-review/>]
- Conduct in disputes [<https://www.sra.org.uk/sra/research-publications/conduct-disputes/>]

These reviews have highlighted issues in how some solicitors and firms meet their regulatory obligations. These include understanding professional obligations, carrying out reflection and undertaking appropriate learning and development

We also carry out specific checks on training and supervision arrangements in firms to understand the steps they take to assure themselves that the solicitors they employ are maintaining their competence. We review training records to understand whether solicitors are learning and developing. We also carry out quality checks, such as file reviews and interviews with solicitors, to assess how effective those arrangements are.

How we respond to a lack of competence

Where we have concerns that a solicitor or firm is not meeting our requirements, we use our regulatory tools to address this. The nature of engagement with a solicitor or firm and the sanctions we impose will depend on the seriousness of the issue and any aggravating or mitigating factors.

We can intervene to influence behaviour where we have concerns about potential or emerging competence related issues. We publish guidance, warning notices or other resources to clarify our expected standard. We also write to solicitors and firms to remind them of their competence obligations.

Where we have evidence of an issue with the competence of solicitors and how firms assure the competence of their employees, we can also introduce targeted regulation.

We take action where we have established that a solicitor or firm is not meeting their Code of Conduct competence obligations. These include requiring that appropriate training, remediation, or supervision are put in

place and imposing interim conditions or controls to prevent a solicitor or firm from providing certain services.

Competence findings: analysis of reports made to us 2019–2023

We analysed 42,000 reports we received between January 2019 and January 2023. We merged the data on these reports with 26,000 individual items of data on practising solicitors and 100,000 individual items of data on regulated firms named in these reports. We also analysed 4,000 of our regulatory decisions from January 2019 to January 2023.

This resulted in a large dataset, consisting of tens of millions of unique data points. We analysed this to determine whether there is any correlation between the characteristics associated with individual solicitors, areas of practice or firms, and the likelihood that we will receive reports about them.

We also analysed reports that contained competence-related concerns and considered whether the reports related to specific aspects of the Statement of Solicitor Competence.

Separately, we analysed 1,200 final decisions taken by the Legal Ombudsman (LeO) following its investigation into a complaint raised by a legal service provider. The data included details about:

- the name of the organisation
- whether the organisation is regulated by us
- details of the decision taken
- area of law to which the decision related
- any remedy imposed.

We also analysed HM Land Registry (HMLR) data. This included the number of requests for information it sends to its customers including law firms. It does this in cases where it receives applications that are incomplete or contain inconsistencies. The applications are, for example, where a law firm is registering a property with the HMLR.

The HMLR dataset contained 26,598 entries. We were able to match 9,745 entries to a law firm we regulate, collected between January 2019 and December 2022.

Findings from analysis of reports 2019–2023

We analysed reports to identify whether and, if so, how their content related to the Statement of Solicitors' Competence. We attributed reports to a relevant section for example, Section A, B, C or D. We found that a report

often relates to multiple sections, and this explains why the percentages in the paragraphs below do not add up to 100.

It should be noted that the numbers that follow relate to the raw number of reports received across the given period, regardless of what the outcome of a given report was. There are many reasons an initial report may not result in an investigation taking place, these may include factors such as whether an issue being reported is within our remit, whether our rules have actually been broken, whether the evidence provided is sufficient to justify an investigation, and more besides

Typically around 15% of reports we receive will lead to a formal investigation taking place. Full data on the number of reports, investigations and disciplinary actions handled by the SRA can be found in our annual Upholding Professional Standards reports.

Our analysis showed 52% of the 42,000 reports we received related to ethics, professionalism, and judgment (section A of the Statement of Solicitor Competence). Reports relating to this section of the statement were more likely to result in us investigating the report.

This was followed by reports relating to working with other people (section C of the Statement of Solicitor Competence) which accounted for 30% of all reports we received. Technical legal practice (section B) accounted for 27% and managing themselves and their work (section D) accounted for 26% of all reports.

In terms of absolute numbers, we received more reports relating to both residential conveyancing and probate matters than any other area of law. Not all the reports we received result in a regulatory decision. However, we found that residential conveyancing and probate are also the areas of practice where we are most likely to take regulatory decisions.

We recognise that the number of reports received may vary according to the type, volume and value of work carried out. We therefore analysed reports made to us using additional criteria.

When we looked at reports by firms that specialise in one area of law, we found that we received more reports about residential conveyancing firms than any other type of specialist firm.

When analysing reports made to us by average turnover in a practice area and the number of fee earners working in a practice area, immigration and asylum firms notably stood out, with much lower turnover per report to us than any other area. Residential conveyancing and probate also had high report to turnover ratios.

For residential conveyancing, the most common area we received reports about related to ethics, professionalism and judgment (section A of the

Statement of Solicitor Competence).

Most reports about residential conveyancing that resulted in a regulatory decision also related to ethics, professionalism, and judgment (section A of the Statement of Solicitor Competence). This was closely followed by reports relating managing themselves and their work (section D). This was also the case for reports relating to probate matters.

Our review of data on decisions taken by LeO found that there was a weak correlation between the LeO evidence of poor service and us receiving a report. Our analysis of the HMLR data suggested that there was no obvious trend in the types of firms from which it requested further information.

Next steps – residential conveyancing, probate, and immigration

Summary

Over the next 12 months we will take the following actions:

- continue to investigate the most serious cases reported to us
- carry out competence-focused inspections
- sample the training records of solicitors in these areas
- follow up on residential conveyancing and probate competence reports that require remedial action
- remind firms of their obligation to make sure that the solicitors they employ maintain their competence and are able to evidence this
- carry out research to understand the risks to and impact on consumers of a lack of competence in residential conveyancing and probate services.

Residential conveyancing and probate

Given these findings, a priority over the next 12 months will be to gather further evidence on the extent to which solicitors undertaking residential conveyancing and probate are meeting their obligations. We also want to understand more about firms' supervision arrangements.

We will do this by:

- carrying out thematic inspections across a sample of residential conveyancing and/or probate firms. We will assess whether and, if so, how solicitors are meeting their obligations to keep their knowledge and skills up to date, including ethics, professionalism and judgment and technical legal practice. We will also review supervision arrangements within these firms. We will publish our findings and next steps during 2024



- sampling the training records of solicitors providing residential conveyancing and/or probate services to identify whether and, if so, how, they are keeping their knowledge up to date.
- clarifying our approach where concerns about solicitors or firms in relation to competence do not meet our threshold for enforcement action, but in response to which we would expect to see improvement.

We will consider the need for enforcement action where we identify, through our inspections or training record reviews, solicitors who are not keeping their knowledge and skills up to date as required by our rules. We will adopt a similar approach for firms who do not have appropriate supervision arrangements in place.

We will write to firms who specialise in residential conveyancing to remind them of their obligation to make sure that the solicitors they employ maintain their competence. We intend to draw attention to the knowledge, skills and behaviours outlined in Section A of the Statement of Solicitor Competence and stress that if a training need is identified, this should be addressed as a matter of urgency.

This work will inform our understanding of the extent to which solicitors providing residential conveyancing and probate services are keeping their knowledge and skills up to date and providing competent legal services. We will then consider the need for further action, for example, whether we need to introduce guidance to contextualise what competence looks like for solicitors practising in these areas.

Immigration

Users of immigration and asylum legal services can be some of the most vulnerable people in our society. The consequences of poor legal services can be particularly severe, long-lasting, and difficult to rectify. Solicitors in the immigration sector therefore play an important role in maintaining the effective administration of justice.

High standards are therefore critical. Where we identify that a solicitor or firm has not met them, we act quickly to take enforcement action. Following our thematic review [<https://www.sra.org.uk/sra/research-publications/immigration-asylum-thematic-review/>] in November 2022 into the quality of services provided and supervision of those providing services, we referred into our enforcement processes:

- four firms because of a failure to provide appropriate evidence of ongoing learning and development
- five firms because we were not satisfied with the supervision of fee earners we did not directly authorise.

We are committed to further assuring ourselves that immigration and asylum solicitors and firms are meeting their competence obligations and providing competent services. This involves:

- the publication of new guidance [<https://www.sra.org.uk/solicitors/guidance/immigration-work-guidance/>] (November 2022), to clarify our expectations on delivering immigration and asylum legal services. This outlined how we expect solicitors and firms to meet their obligation to maintain competence and have effective supervision arrangements in place
- carrying out further immigration and asylum firm inspections to assess whether improvements have been made in service delivery and supervision arrangements following publication of our guidance
- expanding and promoting information on our rules and best practice we have available to firms. This includes further resources for immigration and asylum solicitors and firms to help them maintain their competence and uphold their professional obligations
- reminding immigration and asylum solicitors and firms of their obligation to supervise
- publishing new information, tailored to asylum seekers and interpreters, on the public-facing Legal Choices website.

Given the findings from our data analysis, we will continue to monitor solicitors' and firms' competence in immigration and asylum legal services. We will explore if further regulatory intervention is required in this area, informed by our follow-up firm inspections and ongoing monitoring of reports.

We will publish our next steps from this work, including whether any further regulation is required in this area, in early 2024.

Competence findings: our wider regulatory work

Analyses of our wider work

We analysed our wider work to identify any broader weaknesses in how some solicitors and firms maintain their competence. Our analyses included reviews of the outcomes of:

- our thematic reviews and inspections [<https://www.sra.org.uk/sra/research-publications/topic/all-topics/>] carried out during 2022 and 2023
- our 2021 youth court and 2022 magistrates and Crown Court training record reviews. This involved examining more than 500 training records of solicitors practising in these courts



- our inspections of 146 firms during 2021/2022 as part of our AML work where we reviewed their training regimes
- the annual declarations made by solicitors between 2016 and 2019.

Findings from this analysis

We expect solicitors to meet their competence obligations to keep their knowledge and skills up to date by reflecting on their practice. Reflection helps a solicitor evaluate their strengths and weaknesses in relation to the demands of their work. We expect that an identified learning and development need is addressed, although we do not prescribe how this be done.

We expect most solicitors will identify a learning and development need if they regularly reflect. This is because there are frequent changes in consumer expectations, technological developments and changes in the law. A failure to demonstrate reflection raises concerns for us that not all learning and development needs are being identified and addressed.

No evidence of reflection

It is not a regulatory requirement for a solicitor to maintain a training record or document that they have reflected on their practice. Doing so, however, demonstrates to us that they are taking steps to keep meet their competence obligations.

We could not be certain from many of the training records we reviewed whether decisions about the learning and development undertaken had been informed by the solicitor's reflection on their practice. Their records did not include the reasons for the choices made.

We found that competing demands on some solicitors' time was a barrier to reflection. We also identified that some senior solicitors felt that, given their seniority, they did not need to regularly reflect on their practice and address identified learning and development needs.

Challenges undertaking learning and development

We found evidence that most solicitors carry out learning and development relating to their area of work. For example, 87% of solicitors whose training records we looked at as part of our magistrates and higher court training record review had completed learning and development relating to criminal and civil advocacy.

However, our analysis suggests that some solicitors do not always carry out training that is appropriate to their role. Some firms mentioned that it was

sometimes difficult to encourage fee earners to undertake relevant training in a busy environment. Encouraging more senior members of staff to undertake learning and development was considered a particular issue by some firms.

Knowledge of obligations

It is important that all solicitors are aware of their professional obligations and risks relating to their area of practice. For example, in litigation, a solicitor should not bring cases which are not properly arguable. Similarly, the question of the use of ethical use of Non-Disclosure Agreements often arises in an employment context. And in house solicitors have particular challenges in safeguarding independence and identifying and managing conflicts of interest.

To do this a solicitor needs to identify, understand, and apply the relevant SRA principles, rules of professional conduct and any guidance we have issued that relates to their work and follow them. We found good examples from our thematic reviews and inspections of solicitors doing this.

However, this was not always the case. Across our work, we found solicitors were not always aware of guidance we have issued and did not regularly carry out learning and development focussed on upholding their professional obligations. For example, we found:

- around two-thirds of fee-earners we spoke to as part of our NDA thematic review were aware of our warning notice on the use of NDAs, although knowledge on the issues it covers were fairly low. We also found little evidence of ongoing NDA-specific training within the firms we visited
- 11 Heads of Department we interviewed in our Conduct in Disputes thematic review were not aware of our guidance on reporting and notification obligations, with a further two unsure whether they had seen it
- 25% of junior solicitors as part of our In-house thematic review had not received any ethical training.

Ineffective supervision arrangements

Effective supervision is both a regulatory requirement for solicitors and firms and good practice in the delivery of competent services to clients. Good supervision can provide opportunities for solicitors to discuss their work and helps to manage the risk of a solicitor acting beyond their competence.

Through our thematic reviews we found examples of poor supervision. For example, some in house solicitors reported a lack of regular and structured supervision. This may make it difficult for them to identify tasks beyond their competence and when to ask for help. We also found that remote and

hybrid working has had a negative impact in some firms on the effectiveness of supervision and on informal learning and development.

Next steps to address findings from analysis of our wider work

Summary

To better assure ourselves that solicitors and firms are maintaining their Code of Conduct competence obligations, we will:

1. publish further guidance in 2024 to clarify our competence expectations and remind all solicitors of their competence obligations
2. continue to identify those solicitors who are not meeting their obligations by keeping their knowledge and skills up to date.

Clarifying our competence expectations

We will clarify how we expect solicitors and firms to meet their Code of Conduct obligations. During 2024, we will publish guidance to further explain:

1. that we expect solicitors to reflect and how they can effectively do this. We will also outline how we expect firms to support such reflection
2. what we expect of solicitors when making their annual declaration (and firms making this on their behalf)
3. what we expect to see in a solicitor's training record.

Our programme of ongoing thematic and inspection work will identify solicitors who cannot demonstrate they are meeting their competence obligations, for example, by not evidencing reflection or addressing learning and development needs. Where we identify a solicitor who is not able to provide evidence that they have met their obligation to keep their knowledge and skills up to date, we will consider whether regulatory action is required.

Where we identify a solicitor who is not able to provide evidence that they have met their obligation, we will consider whether regulatory action is required. This will be on the grounds that they may not be meeting their regulatory obligation to keep their knowledge and skills up to date.

We will also remind all solicitors, including those who work part-time, practise outside of the UK, work as a consultant and or in-house, of their obligations to maintain their competence.

Understanding whether and, if so, how solicitors follow their professional obligations

We expect solicitors to act ethically by understanding and upholding their professional obligations. Given our findings, we will seek further assurance that solicitors practising across all areas of law understand both how their professional obligations apply to, and the specific risks associated with, their area of practice and are carrying out learning and development if a need for this is identified.

We will carry out a thematic review to help us understand whether and, if so, how solicitors are doing this. The findings from this work will inform whether we need to develop our regulatory approach regarding maintaining competence in this area. We will also deliver the commitments we made in our in-house thematic review to develop resources to help in-house solicitors understand and meet their professional obligations.

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Review of our annual declaration

In light of our findings, we will also review the declaration we require solicitors (or firms on their behalf) to complete when renewing their practising certificate. We will focus on understanding whether the current declaration drives the learning and development behaviours we expect to see in practice. We will also explore whether maintaining a training record should be a regulatory requirement. Any changes to the declaration itself, if necessary, would follow in 2024/25 at the earliest.