

SRA response

Legal Services Board: Draft statement of policy on ongoing competence

Published on 07 March 2022

Introduction

1. The Solicitors Regulation Authority (SRA) is the regulator of solicitors and law firms in England and Wales. We work to protect members of the public and support the rule of law and the administration of justice. We do this by overseeing all education and training requirements necessary to practise as a solicitor, licensing individuals and firms to practise, setting the standards of the profession and regulating and enforcing compliance against these standards. We are the largest regulator of legal services in England and Wales, covering around 90% of the regulated market. We oversee some 156,000 solicitors and around 9,800 law firms.
2. We welcome the opportunity to respond to the LSB's consultation on its draft statement of policy on ongoing competence. We have developed our ongoing competence regime in recent years, so this is a timely opportunity to share thinking and review our approach.
3. Ensuring the competence of those we regulate is critical to public protection and achieving our regulatory objectives. Serious mistakes and poor standards of service, caused by solicitors not maintaining our minimum standards of competence, can have a detrimental impact on consumers. This is particularly true of those least able themselves to judge the quality of the legal services they receive.
4. Our approach to continuing competence is based on three principles:
 1. Our role as regulator is to set and enforce against appropriately challenging threshold standards. This maintains professional standards and trust and confidence in the profession.
 2. We must balance entry standards and continuing competence requirements with the risk of increasing the regulatory burden and cost of providing legal services, which may have a negative impact on access to justice, diversity, and competition.



3. Our approach to continuing competence reflects the risks of the market that we regulate, the regulatory objectives and the better regulation principles.
5. We recognise the force of the LSB's consumer research, which shows that consumers expect more specific checks on competence throughout lawyers' careers and that regulators should do more to reduce the risk of lack of competence.
6. In response, as an evidence-based regulator, we have established a programme of work to look at whether we can collect and analyse more data SRA consultation response about competence. This is so that we can target interventions in the most proportionate and effective way.
7. We will build on our proactive regulatory approach to competence, for example, through our programme of thematic work, with focused reviews of competence in general practice and in-house solicitors. We will consider whether we can deploy our existing broad toolkit of interventions more widely or differently to understand better and support continuing competence.
8. We are also working on a wide range of activities in this area. These include updating our competence resources to better support reflective practice and reviewing training records of those practising in the Higher and magistrates' courts.
9. We note the LSB's expectation that the outcomes set out in the statement must be met within 18 months of publication of the final statement of policy. We will work to develop our approach over the next 18 months, with a sharp focus on enhancing our data collection and the evidence base it will give us. Alongside the work programme to refine and enhance what we currently do, we will also undertake the broad range of activities set out at paragraph 16.
10. We will continue to keep the LSB updated as our work progresses.

Our response

Q1. Do you agree with the proposed outcomes?

11. We agree with proposed outcomes one, three and four.
12. We note for completeness that the outcomes relate to individual authorised persons and that our approach also



includes the entities - the law firms – that we regulate. Our Code of Conduct for Solicitors, RELs and RFLs requires them to make sure that the service they provide is competent and that they maintain their competence by keeping professional knowledge and skills up to date. In addition, our Code of Conduct for Firms requires firms to make sure their managers and employees are competent to carry out their role and that they keep their professional knowledge and skills up to date. This recognises that the delivery of competent legal services goes wider than individual solicitors.

13. We think that the second outcome (that regulators should' regularly assess and understand the levels of competence within the profession(s) they regulate and identify areas where competence may need to be improved') could be clearer that this is about making regular, sector wide judgements about the levels of competence of those they regulate, rather than testing individuals.
14. Some of the work we already do goes to the outcomes set out by the LSB, and we know there are opportunities to do more. We set out below what we are doing now and how we are building on our work in the light of the LSB consultation:
 1. We set the standards of competence that those we regulate should meet at authorisation and beyond in our Statement of Solicitor Competence.
 2. We gather, assess and analyse data and information from external and internal sources to inform our regulatory approach (see Annex A for examples). And we have information sharing arrangements in place with a wide range of organisations.
 3. We make sector wide interventions where we have evidence of concerns about competence, for example our Higher Rights of Audience Assessment.
 4. We can take regulatory and remedial action where the standards we expect for competence, set out in our codes and in our Topic Guide for Competence and Standard of Service, are not met.
15. Building on this, we are putting in place a broad range of planned activities aimed at enhancing competence. These include:
 1. Updating our competence resources to better support reflective practice and to communicate and promote them to those we regulate. This is in response to feedback from



solicitors and the findings of our review of training records of those working in the youth courts.

2. A review of the training records of solicitors providing advocacy in the Higher Courts and magistrates' courts.
 3. Competence-focused thematic reviews as set out above, we are carrying out a thematic review of competence in general practice firms. We are also undertaking a thematic review of in-house solicitors, looking at the key risks facing client organisations, in-house teams' ability to provide competent and independent services and how they can be supported.
 4. Interviews with the firms under our regulatory management arrangements to understand how they meet our competence requirements. These interviews will be with those in firms responsible for learning and development, to understand the systems and processes in place, and individual solicitors, to find out how the processes are applied in practice.
16. In response to the LSB's thinking in this area, we will also undertake a programme of work to review our existing processes to see whether we can do more to:
1. Enhance our use of existing data. We will analyse the conduct reports we receive to better distinguish competence issues from other problems and better track issues that may be related to incompetence.
 2. Enhance our collection of and use of data and information from external sources. We will continue to build our relationships with other agencies and other regulators to collect more information to inform our regulatory work and feed this into both our decisions about acting in individual cases of concern, as well as our sector-wide assessments of competence.
 3. Respond in individual cases. Where there are concerns about competence, we will look at whether we can increase our remedial activity, such as recommending training and enhanced supervision.
 4. Respond to sector wide issues. We will consider how we identify sector wide issues with competence with reference to, for example, different market segments, different career stages, points at which an individual or organisation moves into a new practice area and practice type.
17. An important aspect of our work will be to assess the impact of any changes in our approach. This will be in terms of:
1. the risks to consumer detriment



2. the cost and impact - both directly for our work on competence and indirectly on our work in other areas
3. the potential impact on those we regulate. As part of this, we will consider how to augment the LSB's consumer research with our own research on consumer views.

Q2. Do you agree with our proposed expectation that regulators will demonstrate that evidence-based decisions have been taken about which measures are appropriate to implement for those they regulate?

18. Yes, we agree that evidence-based decision making in this area is critical. We will consider all the LSB's proposals carefully and make targeted and proportionate interventions where there is evidence to suggest that this is required. An example of our approach is our recent review of the training records of those practising in the youth courts.
19. Our planned programme of work will help to provide the evidence on which to base any further actions, in line with this expectation.

Q3. Do you agree with the LSB proposal that each regulator sets the standards of competence in their own competence framework (or equivalent document(s))?

20. Yes, we agree that competence frameworks (or equivalent) are an effective way to set clear and transparent standards for regulated communities.
21. We introduced our Competence Statement in 2015. It defines the skills, knowledge, attributes and behaviours that solicitors should meet at authorisation and beyond, and is supported by our:
 1. Statement of Legal Knowledge, which sets out the underpinning knowledge of law intending solicitors need to demonstrate before qualification.
 2. Threshold Standard, which sets out the standard at which we expect would-be solicitors to be able to perform at point of qualification.
22. We developed our Competence Statement following a comprehensive review of our approach to the education, training and continuing competence of our regulated community. This acted on many of the recommendations of the 2013 Legal and Education Training Review. Our development process included an extensive programme of engagement and testing with a wide range of stakeholders.

Over 2,000 consumers, solicitors and other stakeholders were involved.

23. Our Competence Statement forms the foundation of the Solicitors Qualifying Examination (SQE), which we introduced in September 2021 as a single, rigorous assessment for all aspiring solicitors. It is also the foundation for our approach to continuing competence: solicitors should reflect on their competence against the competences set out in the Competence Statement.

Q4. If not, would you support the development of a set of shared core competencies for all authorised persons?

24. We agree that, at a high level, competence frameworks can be consistent and we share the LSB's interest in encouraging collaboration between regulators in this area. Evidencing this, we conducted the first stages of the development of our Competence Statement with the Bar Standards Board (BSB) and, where possible, strove for an appropriate degree of consistency with its Professional Statement.
25. We also believe that competence frameworks need to accurately reflect the specific requirements of effective performance in each profession. This means our Competence Statement is targeted at the core activities required for effective performance as a solicitor, where practice rights are very broad.
26. We recognise that those who took part in the LSB's public panel research identified a shared competence framework as a measure that would give them greater confidence in the competence of authorised persons. As noted by the LSB in its consultation, a set of shared core competences could either be too general to be meaningful or too complex to be useable. We agree that it would be challenging to develop a framework that could effectively underpin the competence requirements of all separate professions.
27. It is also important to note that our Competence Statement has only been in force since 2015 and the SQE was introduced in September 2021. The first sitting of SQE1 ran in late 2021 and the first sitting of SQE2 has still to take place. These are very significant reforms which, in the case of the SQE, our regulated community, aspiring solicitors and training providers will be adapting to for years to come.
28. We must make sure that the Competence Statement reflects current demands of solicitors' practice, and we will review it



on an ongoing basis. We would expect that changing the Competence Statement would need firm evidence that the competences are out of date. Making material changes to the Competence Statement at this stage without good reason would disrupt the implementation of the SQE and risk the rigorous assessment of solicitors at the point of admission.

Q5. Do you agree with the areas we have identified that regulators should consider (core skills, knowledge, attributes and behaviours; ethics, conduct and professionalism; specialist skills, knowledge, attributes and behaviours; and recognition that competence varies according to different circumstances)?

29. Our Competence Statement is split into four sections, which align with the areas identified by the LSB as areas that regulators should consider when they develop a competence framework (or equivalent):

1. A Ethics, professionalism and judgment. This section sets out competences in relation to the ethical attributes of honesty and integrity, knowledge of relevant legal principles, an ability to apply those principles effectively, problem solving and professional behaviour when an issue is beyond someone's capability and expertise.
2. B Technical legal practice. This section sets out competences in relation to the specialist skills that are required for effective performance as a solicitor including legal research and drafting, written and spoken advocacy and negotiation skills.
3. C Working with other people. This section sets out competences in relation to effective communication, client care and the behaviours that are required to establish and maintain effective and professional relations with clients and others.
4. D Managing themselves and their own work. This section sets out competences in relation to professionalism, good business practice and managing work effectively.

30. In further alignment with the LSB's proposed expectations for regulators, the definition of competence used in our Competence Statement (taken from the medical profession) is adaptable and recognises that requirements change depending on job role and context¹ [n1]. It also recognises that competence develops, and that an individual may work 'competently' at many different levels. This could be at



different stages of their career or from one day to the next depending on the nature of their work.

31. We feel strongly that it is difficult for profession-wide competence frameworks (or equivalent) to include specific requirements for individuals who work in particular practice areas. Solicitors have a very wide diversity of practice, and our Competence Statement is deliberately broad and generic so that it can be applied to the solicitor profession as a whole. The overwhelming majority of stakeholders with whom we engaged when developing the Competence Statement agreed that it reflected what they would expect a competent solicitor to be able to do, and the majority agreed that no additional competences were needed. It would, we believe, be impossible to cover – in one statement – how the general competences would apply to solicitors practising in specific fields.
32. Our Competence Statement is flexible and can be used by individuals and firms as a starting point for their particular practice. They should apply the competences to the demands involved in working in their area of law. We have also produced resources which contextualise elements of our Competence Statement for areas of practice that we have identified as high-risk. For example, we collaborated with the BSB and CILEx Regulation to produce a set of competences for lawyers who practise in the coroners' courts, following concerns raised by the Ministry of Justice about the quality of advocacy in inquests. Our version of the competences reflected input from consumers and builds on requirements in our Competence Statement.
33. In its consultation, the LSB notes that some stakeholders in its call for evidence suggested emotional competences (for example, stress management) and digital competences as important. A degree of emotional intelligence is implicit in several requirements from the section of our Competence Statement on working with other people. We see stress management as a way of solicitors managing their wellbeing, and one that we can support through guidance rather than requirements. Accordingly, we have launched guidance about wellbeing for the firms we regulate.
34. We will continue to keep our Competence Statement under review to ensure that it remains fit for purpose, including in relation to digital competence. Solicitors (and arguably all professionals) are likely to need to have a degree of digital competence to be employable. But while organisations providing legal services will increasingly need to draw on



digital expertise to run their businesses, we do not see that it follows that there is a case for requiring every solicitor to demonstrate specific digital competences.

35. Rather, the Competence Statement is outcomes focused. For example, solicitors must be able to communicate effectively and apply good business practices. In most cases these competences will require some digital literacy, but what this is and how these competences are met will change over time. With this in mind and subject to future developments, we will continue with our targeted and proportionate approach to specific issues of digital competence as it develops, publishing guidance where appropriate. For example, our resources for solicitors who practise advocacy will help them do so effectively in remote hearings.

Q6. Do you agree with the LSB proposal that regulators adopt approaches to routinely collect information to inform their assessment and understanding of levels of competence?

Q7. Do you agree with the types of information we have identified that regulators should consider (information from regulatory activities; supervisory activities; third party sources; feedback)?

Q8. Are there other types of information or approaches we should consider?

36. We agree that the routine collection of data is important and that the types of information set out are useful. Our overall regulatory framework is informed by a broad range of intelligence and data that derives from both our regulatory work and other external sources.
37. In terms of competence specifically, we gather data and information through a range of sources and think what we collect aligns broadly with the categories the LSB has identified. In response to the LSB's analysis, we will consider how we can enhance our use and understanding of our existing data and what more we could potentially capture, for example:
1. Enhancing how we look at reports of competence – we record whether a report to us relates to competence. We will be scrutinising reports of incompetence and reports of any concerns that might be associated competence, for example, inadequate client care, to see what more we can do to enhance our response to them. Having said this, we know that a report can cover several areas and one firm, or individual, can have several reports made against them,



meaning that reports of poor competence alone are minimal. Where there are concerns about poor competence, it is vitally important that these are shared with the regulators. We would welcome the LSB promoting the need to report concerns about competence with key stakeholders, such as the judiciary.

2. Competence focused thematic reviews – our thematic review team undertakes risk-based reviews of areas of law or areas of concern. We plan to undertake competence-focused thematic reviews later this year of general practice and in-house solicitors² [n2]. Thematic reviews involve indepth interviews with managers and fee earners and visits to firms, to review files and look at the quality of work. Our thematic reviews often target high-risk firms, identified through existing reports and data modelling.
3. Undertaking training record reviews – in our summer 2021 pilot we reviewed 364 training records of those who practise in the youth courts to identify whether they had met our competence requirements. The pilot identified the need for better self-reflection, and we are updating and improving the materials we publish to support solicitors do this better. We will now be undertaking further reviews of records in high-risk areas. These further reviews will help us to identify what further resources are needed.
4. Following up on annual declarations – as part of their annual practising certificate renewal, solicitors must tell us that they have 'reflected on their practice and addressed any learning and development needs'. This means we can look at the data from declarations and follow up where respondents say they have not. We will also consider doing follow up spot checks where they told us that they have maintained their competence and ask about the basis for them making the declaration. This information will help us better understand levels of competence across the profession.
5. Improving information from external sources – we have Memoranda of Understanding and information sharing agreements in place with a wide range of external agencies and other regulators. These include the Legal Ombudsman, the Serious Fraud Office, the Legal Aid Agency and the Office for the Immigration Services Commissioner. This helps us identify concerns with individual solicitors and firms and part of our upcoming programme of work will be to consider how this information can feed into our sector-wide assessment of competence.



38. As part of our work, we will also need to carefully assess the impact of this additional activity on those we regulate, and on our internal operational functions.

Q9. Do you agree with the LSB proposal that regulators should be alert to particular risks (to users in vulnerable circumstances; when the consequences of competence issues would be severe; when the likelihood of harm to consumers from competence issues is high)?

39. Yes – we strongly agree. In our view, a targeted and proportionate approach based on the risks to consumers is key in this area.

40. Segmentation is central to our approach to evidence gathering for our regulatory work. We recognise that legal systems, consumer needs, service delivery and market conditions are different and will develop differently for specific groups. This approach helps us target our work and target the tools that we might utilise to address regulatory issues. We will consider how we develop and enhance our risk assessment in relation to competence. We will also look at, for example, the impact of role, stage in career, type of firm and client base, as well the wider risks we consider as part of our segmentation work.

Q10. Do you agree with the LSB proposal that regulators adopt interventions to ensure standards of competence are maintained in their profession(s)?

Q11. Do you agree with the types of measures we have identified that regulators could consider (engagement with the profession; supporting reflective practice; mandatory training requirements; competence assessments; reaccreditation)?

Q12. Are there other types of measure we should consider?

41. We agree, as set out at paragraph 3, that ensuring the competence of those we regulate is critical to public protection and achieving our regulatory objectives. That means evidence-based interventions by regulators to ensure that standards of competence are maintained.

42. We have described elsewhere in this response, some of the interventions we have undertaken, for example:

1. additional compulsory before the event safeguards, such as post admission qualifications or training³ [#n3]
2. targeted thematic reviews (such as firms providing immigration advice and services, focusing on training,



supervision and competence)

3. targeted guidance and support, and reviews of training records
4. a topic guide on competence and standard of service as part of our enforcement strategy, making it clear what our tolerance for competence and poor service is.

43. We think that all the options that the LSB has proposed are appropriate as part of a suite of interventions that can be deployed in response to evidence of specific risks.

44. For example, we are considering whether there is evidence for introducing accreditation to work in the youth courts and reaccreditation for those providing advice in police stations (who must already be accredited). In looking at these, we want to make sure that any intervention will be effective at addressing an identified problem and not have unintended consequences, such as deterring people from practising in this area.

45. We will also look at whether we can make more frequent use of the arrangements in our topic guide that allow us to require that appropriate training, remediation or systems of supervision are put in place.

46. As the LSB noted in its report, there is some helpful practice in other jurisdictions for us to consider, for example in relation to requiring training in specific areas where a particular risk or concern has been identified and in relation to auditing and spot checks.

Q13. Do you agree with the LSB proposal that regulators develop an approach for appropriate remedial action to address competence concerns?

Q14. Do you agree that regulators should consider the seriousness of the competence issue and any aggravating or mitigating factors to determine if remedial action is appropriate?

47. Yes. Our approach to individual cases of competence concerns is set out in our topic guide on competence and standard of service. This explains the mitigating and aggravating factors we will consider how we can engage with the firm or solicitor to resolve a matter and what remedial action we will take. Strong mitigating factors will generally result in us working with firms and individuals to improve standards. This could involve:



1. agreeing or imposing conditions or controls to prevent the individual or firm from providing certain services, if we do not consider they can do so safely and effectively
2. making sure that appropriate training, remediation or systems of supervision are put in place.

48. We will consider whether we can utilise these powers more frequently and more effectively in future.

Q15. Are there other factors that regulators should consider when deciding whether remedial action is appropriate?

49. In taking a risk based and targeted approach, we think it is important to consider individual concerns about competence within the wider context of the area. We will consider how we do this as part of our programme of work on competence.
50. More broadly we can take remedial action should we identify issues within a particular area. Steps we can currently take are set out above and examples of where we have responded to evidence of concerns in particular areas are set out at Annex A.

Q16. Do you agree that regulators should identify ways to prevent competence issues from recurring following remedial action?

51. Yes, we think that regulators should consider how they can help prevent competence issues recurring following remedial action.

Q17. Do you agree with our proposed plan for implementation?

Q18. Is there any reason why a regulator would not be able to meet the statement of policy expectations within 18 months? Please explain your reasons.

52. We will work to develop our approach over the next 18 months, as set out above, with a sharp focus on enhancing our data collection and the evidence base it will give us.
53. Alongside the work programme to refine and enhance what we currently do, we will also undertake the broad range of activities set out at paragraphs 15 and 37 above.
54. Should we identify issues in our evidence base that require immediate attention, we will respond accordingly.

55. We will continue to keep the LSB updated as our work progresses.

Q19. Do you have any comments regarding equality impact and issues which, in your view, may arise from our proposed statement of policy? Are there any wider equality issues and interventions that you want to make us aware of?

56. We will consider the impact of any changes to our approach on groups with protected characteristics as part of our work programme. We are mindful of the need to balance both confidence in competence and the risk of any interventions having negative impact on access to justice, diversity and competition. This potentially could impact on both the diversity of the profession and the users of legal services.

Q20. Do you have any comments on the potential impact of the draft statement of policy, including the likely costs and anticipated benefits?

57. Our work programme will look at the potential impact of any changes, including the likely costs and anticipated benefits.

Q21. Do you have any further comments?

58. In any work on competence, we share the LSB commitment to the regulatory objectives as well and good regulatory practice. Our role as a regulator is to specify and set the minimum standards for competence, and we are committed to undertaking interventions that are proportionate, evidence based and targeted.

Annex A– an evidence-based approach

Case study: conveyancing – enhancing our approach

Our thematic review of conveyancing in 2019 helped us better understand how firms are delivering residential conveyancing services, and whether they are fulfilling their obligations to their clients. We found that the vast majority were. But there were some concerns around:

1. transparency of costs and fees for long term contractual arrangements with clients

2. not explaining the differences between freehold and leasehold properly
3. not processing paperwork efficiently - especially in relation to requisitions raised by HM Land Registry.

Our response has been ongoing. In 2018, we introduced our transparency rules which require firms offering conveyancing (amongst other legal services) to publish detailed price and service information, and their complaints procedures online. Our one-year evaluation of the overall implementation of these rules indicated that most consumers (79%) found that price information on websites helped them estimate or identify actual costs of legal services.

We also undertook targeted work in relation to leasehold provisions and introduced regulatory guidance setting out our expectations. This is because we had concerns that clients were not receiving appropriate advice on onerous clauses in leasehold agreements.

In addition, we have continued to build our relationship with HM Land Registry and are putting in place information sharing arrangements for requisitions data with them, as well as joining their Advisory Council.

Case study: advocacy – responding to evidence and risk

Persistent concerns were raised with us about the standard of solicitors' advocacy, mainly focused on criminal higher court advocacy. Our subsequent thematic review found that solicitors practising criminal advocacy relied heavily on the number of years' post qualification experience as a measure of competence and to justify undertaking little ongoing professional development.

However, there is little evidence about whether poor advocacy is a widespread problem. But we recognise the impact of poor advocacy leading to significant consumer detriment, where financial redress is inadequate, and clients involved in both civil and criminal trials may be vulnerable.

In response, we have:

- revised our standards and requirements for Higher Rights of Audience to make them more robust
- undertaken a review of learning and development records from solicitors practising in the youth court
- published resources for the public and other stakeholders explaining the criminal and civil advocacy standards we expect of solicitors and encourage reporting to us when these are not met.

Case study: immigration advice and services – building our understanding

We were aware from our engagement with stakeholders that there were concerns about areas such as competence and supervision arrangements for solicitors providing immigration advice and services. But reports to us about conduct and reports to the Legal Ombudsman about service were low in this area relative to other areas of law, despite the concerns being raised with us.

This led to us undertaking a thematic review of immigration advice and services to develop our own evidence base and understanding. The review report will be published later this year.

We are already starting to act on the early findings. We are developing new supervision guidance and have brought together the other regulators in the sector to work to help consumers overcome barriers to complaints.

Notes

1. Our broad definition of competence for our Competence Statement is 'the ability to perform the roles and tasks required by one's job to the expected standard' (Eraut & du Boulay, 2001).
2. We are currently undertaking a thematic review of immigration and asylum services and have recently published one focused on work-based culture. Recent thematic reviews which looked at competence as part of the review include: Asylum, Competency, Conveyancing, Criminal advocacy and Personal injury. These are available at www.sra.org.uk.
3. For example, we currently require those providing advocacy in the Higher Courts to have passed our Higher Rights Assessment.