

# Understanding implementation of our approach to continuing competence

2 July 2019

## *Executive summary*

### *Why continuing competence matters*

We expect all solicitors to deliver a proper level of service to clients. This is a basic expectation of the profession and helps maintain the UK as the world's centre of excellence for legal services.

To do this, solicitors must meet our standards by keeping skills and knowledge up to date. Our Competence Statement sets out the standards we expect them to maintain.

In 2016, we changed our requirements as to how solicitors meet these standards. We moved away from requiring solicitors to carry out a mandatory 16 hours of approved training to a more relevant and up to date process.

Instead of having to sit through training sessions, regardless of their value, we asked the profession to instead reflect on their practice, look at their training and development needs for the practising year and take appropriate steps to address any gaps. This meant that time was not wasted in irrelevant training, and that wider learning – such as research and on-the-job training- could be considered. We are clear that meeting our requirements does not need to be separate from a solicitor's core work.

Making an annual declaration on what they have done to maintain their competency is a mandatory requirement for every solicitor. All must regularly reflect on the quality of their practice, identify and address their learning and development needs.

### *This report*

This report looks at how law firms and solicitors have responded to the new regime. It also identifies areas that we need to consider further.

Our findings are based on:

- a thematic review of the work of 20 firms
- an online survey that attracted nearly 500 responses
- our own data, including the annual declarations made to us about continuing competence in practising renewal applications.

### *What did we find?*

Our continuing competence regime is still too new to allow any concrete conclusions to be drawn. However, feedback from the profession says:

- Most firms and solicitors implemented the scheme without significant problems.
- The vast majority of firms have maintained or increased their support for learning and development, with 52% of solicitors doing about the same amount of learning and development; 40% doing more; and only 9% doing less.
- Solicitors tell us that our approach has helped them to better identify their needs, as learning and

development appears to be more relevant and targeted.

- Most firms reported a reduction in the cost of learning and development by focussing activity on specific roles and teams, and working with other firms to develop and deliver training.

Solicitors feel that the removal of the 16 hours requirement has not led to a decline in the quality of their work. Nearly 40% felt that the changes had improved the competence of solicitors. Other findings included:

- The quality of record keeping is variable.
- A small number of solicitors repeatedly return a negative declaration, ie that they have not reflected or addressed their learning needs.
- Some solicitors have told us that they find it difficult to make time to reflect, identify and address their learning and development needs as part of their day to day work.

### *What are our next steps?*

In summer 2019, we plan to contact solicitors working overseas, in-house, recently admitted, working part time or as a consultant to remind them that the new approach applies to them.

We will also write to 35 solicitors who have consistently returned a negative declaration to explain why they have not carried out any learning and development. Where there has been wilful non-compliance with the obligations of our approach, we may decide to take regulatory action.

In autumn 2019, we will update the support we already provide to solicitors by:

- Publishing resources on what good recording looks.
- Providing examples of good practice in managing the time involved in maintaining competence.
- Adding the good practice case studies identified in our thematic review.
- Developing further case studies and materials targeted at small firms.

Open all

## *Background*

### *What is this report?*

This report summarises views from law firms and solicitors on how our continuing competence approach has been implemented. It helps us review our approach and maintain our commitment to make sure that solicitors we regulate continue to meet the standards we expect. The findings also identify issues for us to consider further.

### *What is continuing competence?*

In November 2016, we introduced a new way of regulating solicitors' continuing competence to practise. The new approach requires all solicitors to reflect on the standard of their work, to identify and then address any learning and development needs. The competences we expect of all solicitors are set out in our Statement of Solicitor Competence. All solicitors are required to make a declaration to us each year to confirm that they have done this.

This approach replaced regulations which required all solicitors to carry out 16 hours of learning and development each year. This imposed a blanket requirement unconnected to role or function. It often meant activity was focused on accumulating hours of training rather than addressing relevant learning and development needs.

Continuing Competence places responsibility for learning and development firmly with solicitors. It requires solicitors to maintain the standards we expect by targeting their learning and development on need rather than simply accumulating hours of activity.

Our focus is on making sure that solicitors meet our standards. We expect all solicitors to do this by complying with our approach. We monitor standards and compliance as part of our targeted, risk-based approach to regulation. Where we undertake a thematic review of a particular practice area, we will look at training records. Similarly, where we have an issue with the standard or conduct of a solicitor, we will expect to see evidence through training records that a solicitor has met our requirements by reflecting, identifying and addressing their learning and development needs.

### *Understanding implementation*

To help us understand how law firms and solicitors have responded to our approach, we:

- carried out a thematic review (PDF 28 pages, 493KB) with 20 randomly selected law firms in December 2018.
- conducted an online survey (PDF 32 pages, 287KB) in December 2018, to which 463 solicitors and firms responded.
- analysed our internal data, including data on the annual declarations made to us.

### *What did we find?*

The new approach to continuing competence is still relatively new and as a result, it is too early for us to draw concrete conclusions as to whether there has been a change in the standard and competence of solicitors. However, feedback from law firms and solicitors gives a feel for their views on the impact so far.

We found that:

- Most firms and solicitors said they implemented the scheme without significant problems.
- Concerns that the new approach might result in solicitors neglecting their learning and development needs do not appear to be borne out by our findings. Our survey results show 52% of solicitors say they are doing about the same amount of learning and development, 40% are doing more; and only 9% doing less.
- Solicitors tell us that our approach has helped them to better identify their learning and development needs.
- Learning and development carried out by solicitors appears to be more relevant and targeted.
- Solicitors and firms report using a variety of approaches to address their learning and development needs.
- As a result, most firms report a reduction in the cost of learning and development activity.
- Solicitors feel that the removal of the 16 hours requirement has not led to a decline in the quality of their work. Nearly 40% of respondents felt that our changes had improved the competence of solicitors.

We also found that solicitors and firms still face challenges implementing our scheme:

- The quality of record keeping is variable.
- A small number of solicitors are consistently returning a negative declaration, stating that they have not reflected or addressed their learning needs.
- Some solicitors tell us that it is difficult to make time to reflect, identify and address their learning and development needs as part of their day-to-day work.

## *Key messages for solicitors and firms from our findings*

All solicitors, especially those practising in high-risk areas, are reminded that continuing competence applies to them. This means that they must regularly reflect on the quality of their practice, identify and address their learning and development needs. Wilful non-compliance with our requirements, may result in us taking regulatory action.

We recognise the challenges raised during our work that some solicitors find it difficult to make time to reflect, identify and address learning and development needs. Meeting our requirements does not need to be separate from a solicitor's core work. Feedback shows that some solicitors are already identifying their learning and development needs through informal and formal approaches which are often part of their day-to-day work, for example reflecting on what went well or less well on a client file.

Similarly, addressing learning and development needs does not have to be separate. Our approach gives solicitors more flexibility in how their learning and development needs can be addressed. Again, feedback we have received shows that solicitors are using a range of approaches to do this many of which form part of their day-to-day work, for example, researching recent cases and the up-to-date legal position in order to advise a client.

Our Continuing Competence resource provides support to help solicitors meet our requirements. This includes how a solicitor can identify learning and development needs and suggests flexible approaches that can be used to address their learning and development needs as part of their day-to-day work. We plan to publish additional resources to help solicitors address and to recognise learning and development needs as part of their core work in autumn 2019.

Solicitors are also encouraged to record their learning and development activity. We may inspect training records where a concern is reported to us or where we are undertaking a visit to law firms as part of thematic review work.

Maintaining a learning and development record demonstrates to us that appropriate steps have been taken to stay competent and up to date. We already provide an example of a learning and development template that solicitors can use or adapt as part of our online resources. We plan to publish further resources on what good recording looks in autumn 2019.

## *What will do with our findings?*

We will:

- In summer 2019, we plan to contact solicitors working overseas, in-house, recently admitted, working part time or as a consultant to remind them that the new approach applies to them.
- Write to 35 solicitors who have consistently returned a negative declaration to ask them to explain why they have not carried out any learning and development. Where there has been wilful non-compliance with the obligations of our approach, we may decide to take regulatory action
- Update our Continuing Competence resources in autumn 2019 to provide more information and support for solicitors and firms. This will include:
  - reminding solicitors that the requirement to maintain competence applies to all those practising, regardless of where they practise
  - providing examples of how to recognise learning and development activities which are part and parcel of everyday work
  - publishing resources on what good recording looks like
  - adding the good practice case studies identified in our thematic review
  - developing further case studies and materials targeted at small firms.

We will also:

- Continue to monitor our annual declaration data to identify issues with our approach and the standards of solicitors.
- Assess how solicitors maintain their competence as part of our Thematic work. This will include looking at how solicitors record their learning and development.
- Continue to analyse reports made to us about the competence of individuals solicitors. Where we have concerns with competence, we may engage with individual solicitors to understand the steps they have taken to stay competent and up to date. If there has been wilful non-compliance with the our requirements, we may decide to take regulatory action.

## *Detailed findings*

We look at the findings in more detail below. We have broken them down into the following categories:

- views on the standard and quality of work
- implementation
- identifying learning and development needs
- addressing learning and development needs
- recording learning and development needs and activity
- annual declaration.

### *Views on the standard and quality of work*

Feedback suggests that solicitors and firms think that continuing competence has helped them maintain or improve the standard or quality of their work. Our findings found that:

- 54% of respondents agreed or strongly agreed that our Statement of Solicitor Competence had made it easier for solicitors to maintain standards.
- 62% of respondents disagreed or strongly disagreed with the view that the technical legal competence of solicitors had declined because of our changes.
- 39% of respondents felt that our changes had improved the competence of solicitors.

### *Survey responses to the impact of our approach*

|  | Strongly agree | Agree | Neither agree nor disagree | Disagree | Strongly disagree |
|--|----------------|-------|----------------------------|----------|-------------------|
| The introduction of our competence and threshold statements have made it easier for solicitors to maintain their skills and competence | 15%            | 39%   | 31%                        | 9%       | 6%                |
| The technical legal competence of solicitors has declined because of our changes   | 2%             | 8%    | 28%                        | 44%      | 18%               |
| Overall, the competence of your solicitors has improved because of our changes   | 10%            | 29%   | 43%                        | 12%      | 5%                |

55% of the firms we sampled in our thematic review felt that the quality of their work had improved since the introduction of our approach. None of the firms said that complaint and insurance claims had increased. Two firms reported that complaints and claims had reduced since the new approach was introduced.

We will continue to review our data and annual declarations made to us in order to identify emerging themes with the standard and competence of solicitors, for example, we could look at the number of complaints firms have received.

### *Implementation*

Most firms told us that they did not find it difficult or expensive to introduce; 81% of respondents to our online survey said they did not encounter any challenges or issues and 70% of respondents said that implementation costs were as expected. For most firms, the Compliance Officer for Legal Practice was responsible for introducing the new approach.

No impact, as the cost has shifted to solicitor time rather than a cash cost

Most firms told us they had made cost savings since introduction because:

- there is now greater flexibility in the type of learning and development activities
- learning and development can be focused on specific roles and teams, and aligned with business objectives
- partnering with other firms and organisations to develop, deliver and share the cost of learning and development produced cost savings.

A small number of firms reported that implementation costs were more than expected. Our thematic review suggested that these costs were often short term, one-off expenditures, for example, producing new training materials or implementing a new learning and development recording system.

Organisations employing in-house solicitors told us that they generally had good training approaches in place prior to the requirement to introduce our approach. As a result, they reported little impact when implementing the new approach.

### *Approaches used to identify learning and development needs*

59% solicitors responding to our online survey said that our the approach made it easier to identify their learning and development needs. 43% said that the support available to help solicitors identify their needs had improved. This was particularly true for in-house solicitors.

We found that most solicitors identified their learning and developments needs informally. The most common approaches used include monitoring changes in law, practice and regulation, attending regular internal meetings and reviewing subscription-based online resources or websites specific to their practice area.

Formal approaches were also used by solicitors to reflect on their performance. Where these were used, they were often structured around formal performance development reviews, for example, annual, mid-year or monthly appraisals. Solicitors also used file reviews and reviewing client feedback.

65% of respondents to our survey said that the Statement of Solicitor Competence was helpful in identifying learning and development needs.

### *Addressing learning and development needs*

Our old regulations prescribed specific types of learning and development. For example, 25% of the 16 hours requirement had to take the form of accredited training. The new approach to continuing competence was designed to give solicitors and firms greater flexibility and freedom, so that they could address their

learning and development needs in ways that suited them.

Three quarters of respondents to the survey agreed with that continuing competence had encouraged them to adopt more flexible approaches in how learning and development needs are met.

The table below highlights the most common approaches now used by firms and solicitors to address learning and development needs.

*Types of training delivered by firms since the introduction of our approach*

*Types of training delivered*

| Internal approaches                    |     | External approaches  |     |
|--|-----|--|-----|
| Reading, research and discussion       | 75% | Training courses on specific topics or areas of law        | 70% |
| Informal training/ on the job training | 69% | E-learning or webinars                                     | 59% |
| Peer to peer informal learning         | 51% | Conferences and events                                     | 58% |
| Mentoring and coaching                 | 48% | Learning and development networks                          | 30% |
| Shared learning                        | 39% | Study towards a professional qualifications/ certification | 23% |
| E Learning and bespoke courses         | 44% | Social media learning platforms                            | 19% |
| Secondments to other departments       | 5%  |  |     |

Feedback from some solicitors as part of our thematic review suggests they can find it difficult to make time away from their day- to-day work to address learning and development needs. Our findings show that solicitors are using approaches as part of their day-to-work to address their learning and development needs, for example, reading, research and discussion.

Also, respondents to our thematic review said that there is now greater collaboration between firms to deliver training or share best practice and reduce training costs. This could be with other solicitors, barristers' chambers or non-legal businesses such as accountants. These were usually informal arrangements for mutual benefit, but others took a more formal approach, partnering with others to provide a set amount of training each year. Collaboration over training was also a key feature of some in-house practices.

*Relating learning to identified needs*

One of the disadvantages of the old, blanket, hours-based approach was that learning, and development activity was not necessarily linked to relevant practice areas or job role.

The new approach was designed to address this problem. 80% of firms who took part in our thematic review felt that the new approach allowed training to address the individual learning and development needs of solicitors. Comments included:

*Quotes from firms and solicitors*

We can focus on what our needs are rather than just meet a target.  
 More relevant as we can deliver our own courses and we do not have to attend off-the-shelf accredited training.  
 More hands-on, more tailored, more relevant to this firm. It is delivered by internal experts. In the old accredited courses, the trainer was not always a practitioner

*Time spent addressing learning and development needs*

Just over half of respondents who took part in our survey spent the same amount of time on addressing

needs as they did under the previous approach. 40% said they were spending more time whilst only 9% said they spent less.

Our work has highlighted that some firms have retained an hours-based approach. Eight firms from our thematic review have kept an internal target of hours per year. These range from 15 to 104 hours (the latter reflecting two hours per week).

The most common challenge identified by solicitors when addressing learning and development needs was managing time pressures. Only half of the firms we spoke to as part of our thematic review said they made a regular allowance of time for solicitors to maintain competence, preferring to arrange training on an ad hoc basis.

The new approach recognises that the quality, relevance and effectiveness of training is as important as the time spent doing it. We recognise that solicitors and firms will need to make time for regular learning and development activities to make sure a proper standard of service is maintained.

However, the new approach is also about embedding ongoing competence in routine work. For example, a competent solicitor will evaluate how well a particular task or transaction went, and what could be done better next time. Similarly, looking up a recent decision or checking whether a statute has been amended, in order to advise a client, is part of keeping up to date with changes in the law. We plan to publish resources in autumn 2019 to help solicitors identify and address learning and development needs as part of their core work.

### *Recording learning and development needs and activity*

We found that most respondents maintained a record of their learning and development needs and the activity carried out to address them. These usually took the form of individual learning and development plans or appraisal documents.

Our thematic review highlighted a mixed picture in how learning and development activity was recorded. Some records were comprehensive and set out how the learning and development need was identified, how it had been addressed and whether this process had identified any further needs. However, others were simply a record of training undertaken and did not show how learning and development was identified or addressed.

The thematic review also found that some solicitors did not record anything despite undertaking learning and development activity. Record keeping can be a useful tool for maintaining competence. In addition, demonstrates to us that that appropriate steps have been taken to stay competent and up to date.

We may call for training records as part of a thematic review, or where we are investigating a concern. We recommend that solicitors not using a learning and development record or those that contain basic information consider how they can improve their current learning and development recording arrangements. Our resource provides an example record.

### *Making an annual declaration*

Continuing Competence requires all solicitors to make an annual declaration to us that they have reflected, identified and addressed their learning and development needs. We have analysed our annual declaration data since the introduction of our approach to identify the number of solicitors who have told us that they have not done this.

### *Solicitors returning a negative annual declaration by year*

| Year  | Number of practising solicitors | % of all practising solicitors making a "no" declaration | Reasons for making a no declaration and number of solicitors |
|-------|---------------------------------|--|--|
| 2016- | 138,063                         | 3% (4,240)   | 1774 Working overseas  |



| Year    | Number of practising solicitors | % of all practising solicitors making a "no" declaration | Reasons for making a no declaration and number of solicitors |                           |
|---------|---------------------------------|--|--|---------------------------|
| 17      |                                 |  | 97   | No learning/devt required |
|         |                                 |  | 345  | On maternity leave        |
|         |                                 |  | 1027   | Not currently practising  |
|         |                                 |  | 73   | On sick leave             |
|         |                                 |  | 700  | Recently admitted         |
|         |                                 |  | 14   | Working in-house          |
|         |                                 |  | 104  | Part/time or Consultant   |
|         |                                 |  | 106  | No reason provided        |
| 2017-18 | 142,357                         | 0.9% (1,386)   | 419  | Working overseas          |
|         |                                 |  | 123  | No learning/devt required |
|         |                                 |  | 193  | On maternity leave        |
|         |                                 |  | 405  | Not currently practising  |
|         |                                 |  | 49   | On sick leave             |
|         |                                 |  | 43   | Recently admitted         |
|         |                                 |  | 25   | Working in-house          |
|         |                                 |  | 21   | Part/time or Consultant   |
| 2018-19 | 145,099                         | 0.7 % (1,063)  | 338  | Working overseas          |
|         |                                 |  | 109  | No learning/devt required |
|         |                                 |  | 155  | On maternity leave        |
|         |                                 |  | 255  | Not currently practising  |
|         |                                 |  | 44   | On sick leave             |
|         |                                 |  | 61   | Recently admitted         |
|         |                                 |  | 15   | Working in-house          |
|         |                                 |  | 14   | Part/time or Consultant   |
| 72      | No reason provided              |  |  |                           |

The number has declined from 3% to 0.7% over the three years since the new approach was introduced. Of this group, the majority are not practising, or are on maternity leave or sick leave. They will not need to undertake training and development while they are away from the office, although they may well need to do so on their return to work.

However, we have identified a small number of solicitors who are either recently admitted, working

overseas, in-house or working part time or as a consultant who have told us that they have not reflected, identified or addressed their learning development needs.

All these groups of solicitors need to ensure they are competent and up to date and they need to make an annual declaration to us about their competence. The largest single group is solicitors working abroad. Under the old system, they were exempt from the 16 hours rule.

We will remind all practising solicitors of their obligation to reflect on quality of their practise, identify and address any learning and development needs. We have identified some groups (for example solicitors practising overseas) who may have returned a negative declaration in the mistaken belief that the obligation to maintain their competence doesn't apply to them.

We will write to these groups to make clear that the new approach does indeed apply to them. We have also identified 35 solicitors who have consistently returned a negative declaration without a valid reason since the introduction of our approach. We will engage with these solicitors to seek an explanation as to why no learning and development has been carried out. If we find that there has been wilful non-compliance with our obligations of our approach, we may decide to take regulatory action.

Our work also explored how solicitors and firms made their annual declaration. The most common approach was for a firm to make the declaration on behalf of their solicitors through bulk practising certificate renewals. Firms obtained their assurances that a solicitor had meet our requirements in several ways including:

- requesting that all solicitors to make the declaration internally before the application is sent
- checking learning and development records
- having each solicitor make a signed declaration in each appraisal.

## *Conclusion*

As we said, the new approach is still relatively new and as a result it is too early to any draw concrete conclusions as to whether there has been a change in the standard and competence of solicitors. But feedback from solicitors and law firms demonstrates that they are embracing our approach to continuing competence and moving away from simply accumulating hours.

We will provide more support to solicitors to help them address the challenges identified through our work. This will include highlighting the resources we have made available.

And we will continue to monitor our data, and follow up the small number of negative declarations, making sure every solicitor knows they have an obligation to reflect on their needs and address any gaps.

We would like to thank all of those who participated in our thematic review and survey.