

Ongoing competence discussion

9 January 2020

Ahead of our call for evidence launch, the LSB hosted representatives from the approved regulators and representative bodies to discuss our developing work looking at ongoing competence in the legal sector. This is one of the LSB five-year policy objectives and we have recently begun gathering evidence to help us better understand existing frameworks to assure competence and any gaps in the current system.

Below we set out some of the high-level comments that were made by those who attended the session. These comments will feed into our thinking for this project in conjunction with feedback from other stakeholders throughout our engagement in the coming months.

Further information on our work in this area can be found on our [website](#).

Legal services – what we know

- some regulators have done a lot of work on defining competence (through developing statements of competence) including engaging widely and the LSB can learn from this work
- there are currently a number of systems in place that include elements of competency checks (e.g. the CPS has its own inspectorate), but there is not a consistent approach across the sector. There could be merit in joining or aligning existing systems to create meaningful feedback loops
- work carried out by some regulators has highlighted the importance of different types of competence i.e. not just technical skills but also important client handling skills. This is particularly true in areas such as youth advocacy (where the ability to communicate with vulnerable young people is particularly key) and in the Coroners Court
- there was some consensus that it may be easier for bigger firms/service providers to manage competency framework requirements compared with smaller firms with less resources
- levels of supervision within providers differ greatly across the market. Some firms have formalised supervision arrangements whereby regulated legal professionals are responsible for the quality of work undertaken by non-qualified staff, which naturally creates an expectation of some degree of oversight of quality/competence. Other structures, such as self-employed practice, do not have inbuilt oversight

Consumers

- the Consumer Panel highlighted the particular difficulties consumers face in assessing the quality of legal services – they are often infrequent purchasers, might be distress purchasers and tend not to shop around. There is also a lack of quality markers available
- consumers are unlikely to drive change to assuring competence –research suggests that consumers tend to assume that lawyers are competent and that measures are in place to ensure that they continue to be
- this review is an opportunity for regulators and representative bodies to be ambitious and aspirational in looking at ongoing competence, including from the consumer's perspective
- there is a disconnect where public trust in lawyers is lower than some other regulated professions, but the public also believe lawyers to be knowledgeable and competent

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- there is a role for public legal education: to make consumers aware that not all lawyers are regulated; to promote the benefits of using regulated providers; to better protect consumers; and to instil greater confidence in the professions

Challenges to assuring competence

- there are currently some limitations to feedback loops and a potential reluctance to share feedback or concerns about legal professionals (e.g. by judges) with regulators – it would be good to understand what the potential barriers are
- the legal sector does not routinely capture consumer feedback on their experience in seeking and receiving legal advice as is common practice in some other service sectors
- a one-size-fits-all approach to competence assurance is unlikely to work for the legal services sector, due to the diversity of the market
- there are challenges in cross regulatory frameworks where regulators oversee an individual but not the organisation, which can limit the influence of the regulator
- consideration should be given to what would be considered a good test of public protection against poor advice or legal services
- role of regulators/representative bodies in setting competence standards - there are ongoing debates on where responsibility lies for establishing *competence* compared to *excellence*
- there is no direct causal link between overall competence and trust in the profession.

Areas of focus for the LSB

- LSB has a pivotal role to play in bringing together the work the different regulators have done/are doing on competence and distilling this into something coherent that could be an overarching framework of standards for the sector e.g. identifying common expectations of competence
- LSB should be careful about relying on anecdotal, qualitative evidence and seek quantitative data where possible. Similarly, it should be cautious about placing undue weight on particular flags (e.g. complaints) without seeing the full picture.
- there was discussion on the extent to which regulators' existing regulatory frameworks would provide tools for requiring some kind of remedial action to address identified competency concerns, rather than treating competency issues as misconduct. It was noted that this does currently take place to some extent and it would be valuable to understand more about how prevalent this is
- we should focus on distinguishing practice areas that are higher risk and fast-moving (in terms of changes to the law), as well as points in a legal professional's career where they might be more vulnerable to competency risks e.g. new job or promotion, returning from a period of extended leave
- need to be clear about when competency interventions should be: before, during or/and after the event
- feedback can play a huge role in self-reflection and assessment of competence, but we need to understand the barriers to providing and implementing change from this.
- quality assurance processes could be important e.g. regulators undertaking audits to oversee the performance of service providers
- this is a potential opportunity to look at the regulated activities and the current political appetite to expand these