



Legal Services Board Draft Statement of Policy on Ongoing Competence

Consultation Paper

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For further information contact

Stephanie Needleman, Legal Director

sneedleman@justice.org.uk

JUSTICE, 59 Carter Lane, London EC4V 5AQ

email: admin@justice.org.uk website: www.justice.org.uk

Introduction

1. JUSTICE is an all-party law reform and human rights organisation working to strengthen the justice system. It is the UK section of the International Commission of Jurists. Our vision is of fair, accessible and efficient legal processes in which the individual's rights are protected and which reflect the country's international reputation for upholding and promoting the rule of law.
2. This paper sets out JUSTICE's response to the Legal Services Board (LSB) Consultation on its statement of policy on ongoing competence. In responding to the consultation paper, JUSTICE has focussed on specific questions that address themes considered by JUSTICE through its *Understanding Courts Working Party*,¹ namely, how to ensure that the needs of lay users are best identified and addressed by members of the profession. Our response to this Consultation also builds upon issues raised during a JUSTICE roundtable event held on 17 February 2022 which looked at "*training legal professionals to effectively communicate with lay users*" ("the JUSTICE roundtable"). Chaired by Sir Justice Robin Knowles CBE in his role as Chair of the Litigants in Person Engagement Group,² the roundtable was attended by regulators and training providers (for both law students and established legal professionals). Attendees discussed various aspects of training and professional competence. Where relevant, we have referred to those discussions in our answers to this Consultation. JUSTICE has refrained from commenting on certain questions which cover more technical issues which we feel are best answered by the regulators and practicing legal professionals.
3. In summary, JUSTICE supports the overall spirit of this consultation in acknowledging that the ongoing competence of legal professionals is central to ensuring that high standards are maintained within the profession and that the needs of all clients can be met. We agree with the conclusions of LSB that whilst numerous measures are in place to allow legal regulators to ensure those entering the profession are competent, there

¹ JUSTICE, '[Understanding Courts](#)' (2019)

² The Litigant in Person Engagement Group is a working group hosted by HMCTS to provide feedback on the design and development of court procedures and practices which have an impact on litigants in person. The aim of the Group is to assist litigants in person in their navigation of the justice system. It has a diverse membership with representatives from the judiciary, HMCTS, The Litigant in Person Network, advisory services including AdviceUK and Money Advice Trust, and charities such as the Personal Support Unit and Legal Education Foundation amongst others.

are far fewer checks in place to ensure that those already in the profession continue to provide a high quality, professional and safe service for their clients.

4. Not only that, but JUSTICE considers that innovations in training, methodology and new ways of thinking about the lawyer-client relationship are continually developing. For example, in its *Understanding Court* report, JUSTICE emphasised the role that all lawyers – be they barristers, solicitors or other legal actors – ought to play in ensuring that clients or witnesses, **especially lay persons**, are able to understand and engage in the legal process. Lawyers must be trained in the skills to identify, and adapt their communication style to suit, any additional support needs that the client or lay person may have. This includes recognising that any lay person who comes before a lawyer is, in some sense, vulnerable – owing to the fact that the legal system and process is likely to be unfamiliar and foreign to them, on top of the stress and emotional challenges associated with their specific legal problem. At the JUSTICE roundtable, there appeared to be consensus amongst regulators that these communication skills are important “tools” to be added to the legal professional’s toolkit to ensure ethical and effective service delivery. Not only does more work need to be done to ensure that these communication skills are embedded in the training programmes for all new lawyers, but it needs to be recognised at all levels of the professions. It is only right that it is not just those newly entering the profession who have these skills, but that all those within the profession share the responsibility to update their training and their service delivery to ensure that they can properly communicate with, and support, their clients. Otherwise, there is a risk of inconsistent standards, safeguards and service-delivery across the profession. JUSTICE considers that the statement of policy on ongoing competence therefore provides a good opportunity to “level the playing field” for legal professionals and authorised persons. It has the chance to bring the legal services sector in line with other professional sectors, whilst also scaling up standards and building public confidence in the profession.

Statement of Policy

Expectations and outcomes

Q1. Do you agree with the proposed outcomes?

5. JUSTICE agrees with the spirit of the proposed outcomes. We are pleased that the outcomes recognise that competence standards may change and therefore the standards that legal professionals must meet should also be updated over time (see para 13., outcome (b)). As discussed above, professional standards should not be set in stone but should evolve to continuously reflect best practice. The standard of competence that a legal professional should be required to meet is therefore likely to change over time and it is important that regulatory safeguards are put in place to ensure that competence standards are not undercut as time goes on. The requirement for regulators to regularly assess and understand the levels of competence within the profession(s) they regulate, and identify areas where competence may need to be improved, recognises this and is vital to ensure that consumers always receive high quality legal services.

6. We also support the nature of the outcomes listed at para 13., outcomes (c) and (d), which require regulators to take an active role in ensuring that competence levels are maintained. Whilst there are many checks in place to ensure competence at the point of authorisation, there are few means to monitor the competence of practitioners once they have entered the profession. As explained above, the nature of professional practice is continuously evolving. It is entirely possible that competencies may deteriorate over the course of a professional's career, for example through lack of practice. It is therefore important that regulators can intervene when competencies are not being met. We consider that giving regulators an active role in maintaining standards will lead to positive improvements within the profession and encourage best practice. We consider that the prospect of being held to account via remedial action will motivate practitioners to regularly evaluate their own competence and therefore, over time, potentially lead to less remedial action being required on part of the regulators.

7. We also recognise the value of regulators having a "flexible and permissive framework" when it comes to setting and assessing their own standards of competence, as outlined in the first and second outcome. Flexibility is, of course, necessary to accommodate the nuances between different areas of the profession. For example, it is logical that those working within an area like asylum law will require more specialist knowledge in certain areas, than those working within a different field. However, that flexibility should not undermine the need for a consistent level of service across the profession, especially when it comes to core skills that should be possessed by all legal professionals. We consider that there are certain skills that are fundamental to the legal

profession and should be maintained at a consistent standard by all those working within the profession – regardless of whether they are a barrister, solicitor or other legal professional. For example, JUSTICE's *Understanding Courts* Working Party identified that there is a pressing need for all areas of the profession to be able to communicate effectively with lay users and to be able to identify the needs of those lay users, regardless of the legal context. This sentiment was recently echoed by attendees of the JUSTICE roundtable, which brought together regulators as well as training providers including law schools, amongst others.

8. Whilst the LSB's inclusion of 'specific expectations' should create a minimum standard of competence requirements which apply to all regulators, individual regulators are still free to determine which precise competencies should be included in their own competence frameworks. We also note that different regulators are likely to interpret the specific expectations in different ways e.g., the reference to "client care" and "practice management" at 19(b) of the Statement of Policy is notably wide. We are also concerned that an overly flexible approach could lead to unhelpful divergences in standards across the profession based on perceived differences which are, in fact, arbitrary and do not reflect reality. For example, we are mindful that at one point, barrister training on vulnerability was focussed on "vulnerable witnesses" in the context of the court room when in fact, as described above, a much larger category of persons are vulnerable than originally recognised and this now reflected in training programmes focused on vulnerable "people" rather than just vulnerable witnesses. Training on vulnerability is also required for solicitors who communicate daily with individuals who may be considered vulnerable by nature of simply being non-legally qualified. Again, we are concerned that the reference to "specialist competencies" at paragraph 19(c) could be interpreted in different ways and lead to inconsistency across the profession. Therefore, we would welcome more discussion and clarity as to what those "specialist competencies" are. For example, as explained elsewhere in this consultation response, we are in favour of a set of core competencies being established, to include communication with lay users.
9. It seemed apparent from the JUSTICE roundtable, that there is currently a clear distinction between the type of training offered to barristers when it comes to communicating with vulnerable persons, when compared to the training available for solicitors. It is therefore vital that there is more dialogue between regulators in different areas of the profession to ensure that, when setting their own competence standards,

they are mindful not only of their differences but also of the common ground between them, so that training can be made more consistent.

10. As described at Q4, we are in favour of the creation of a competence framework that includes shared competencies whilst allowing for flexibility above and beyond a minimum, shared “floor.” This will help to ensure that whilst being flexible and permissive, the competence framework is also rational, coherent and establishes a consistent ‘base-line’ for certain core skills across the profession – including communication skills, as discussed above. This baseline would establish a threshold which cannot be undercut but which can be built upon, where appropriate, in the context of different areas of the profession. The importance of this cannot be overstated and must be considered in terms of the consumer’s perspective. For example, in any one legal case, a consumer may interact with a paralegal, a solicitor and a barrister. Regardless of whom they are communicating with, the consumer’s expectation of service delivery is unlikely to change but, without a consistent standard, their experience may differ greatly from interaction with one professional to another. This approach would ensure a consistent and coherent approach to competence across the legal services sector, avoiding arbitrary differences and guaranteeing a consistent standard of high-quality service for consumers.

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?

11. JUSTICE considers that there are other organisations better placed to answer this question and determine the exact means by which regulators should justify to the LSB the actions they have or have not taken. However, we agree in principle that there should be dialogue between regulators and the LSB over the measures implemented. In the light of our response to Q1, we consider that the LSB has an important role to play in ensuring that any divergent approaches adopted by regulators, are a) logical, b) reflect both the differences and similarities between areas of the profession and c) do not undermine the need for a consistent minimum standard of service delivery across the profession. We consider that regulators must be accountable to the end consumer and therefore must bear responsibility for ensuring that any harm / risk to a consumer is mitigated by ensuring professionals in their sector have the necessary competencies and adhere to an appropriate competency standard.

Specific expectations

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))?

12. JUSTICE considers that it is possible for the LSB to create a competence framework that is both flexible (in terms of reflecting the nuances of different parts of the profession), whilst also ensuring a consistent baseline across the board (through the creation of shared, core competencies).

13. LSB should encourage dialogue and cross-working between regulators to identify the common competencies which apply across the profession. These competencies should then be included in the set of core competencies envisaged by Q4 and which apply equally to all areas of the profession. By identifying basic competencies which are common to all legal professionals, the LSB would be effectively helping to establish a consistent minimum 'baseline' of standards. Regulators could then build on this 'floor' through their own separate competence frameworks, where they identify specific competencies which apply to their regulated professionals or specify a higher standard of competence than that required by the minimum standard. This approach would give regulators flexibility whilst also ensuring that consumers receive a consistently high-quality service, irrespective of the legal professional they instruct. The need to accommodate both flexibility and consistency, was something raised and agreed upon at our JUSTICE roundtable.

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

14. As set out in response to our answer to Q3 above, JUSTICE supports the creation of a set of shared common competencies. As explained above, creating a set of shared core competencies creates a floor, not a ceiling, and guarantees a consistent set of standards across the profession, whilst respecting the appropriateness of regulators being able to set their own standards over and above that baseline.

15. Whilst we would encourage dialogue between regulators to identify competencies which are common to all authorised persons, JUSTICE's work in *Understanding Courts*

and our recent roundtable have shown us that there are competencies which apply across the profession and in which all legal professionals should be able to display a minimum level of competence. For example, the *Understanding Courts* Working Party emphasised the importance of legal professionals being able to adapt their communication skills to suit the needs and level of understanding of the lay users they may come across. Whilst *Understanding Courts* looked at the role of legal professionals and lay clients in the context of a court setting and the questioning of witnesses,³ we consider that such lessons can be expanded to cover all areas of the profession.

16. Attendees at our roundtable highlighted the fact that all lay persons or consumers who come before a lawyer or become involved in a legal process are, to a certain extent, vulnerable. By reason of their unfamiliarity with the legal profession, potential lack of legal knowledge and lack of legal representative, such consumers automatically experience an “inequality of arms”. They often experience difficulties understanding the legal process and are left disillusioned by the lawyer-client relationship. Confusion breeds contention and it is not a coincidence that most complaints made against lawyers are those relating to communication. In many respects, lay users/ consumers can be regarded as ‘vulnerable’ simply by reason of their status as a ‘non-legal professional’.
17. A lay user or lay consumer may appear in any legal context, in front of any legal professional. To that end, we consider it vital that all legal professionals – regardless of the forum - should be skilled at adapting their communication style to suit the needs of their client / consumer and to identify where that client / consumer may have additional support needs. Facilitating effective engagement and understanding on part of a client / consumer is a core element of the role of any lawyer and it is not specific to certain areas of the profession.
18. Whilst certain areas of the profession may require enhanced skills to deal with those clients / consumers who are likely to have more complex needs, the ability to identify those needs (even simply for the purpose of referring on to a specialist better placed to accommodate those needs) is a responsibility which is shared by all legal professionals. JUSTICE considers that the ability to communicate with lay persons and identify vulnerability, should be included as a shared core competence. Were all legal

³ JUSTICE, [‘Understanding Courts’](#) (2019), Recommendation 34.

professionals required to meet this competency, it would lead to improved service delivery, decrease consumer complaints and overall, increase public confidence in the profession.

19. Regulators can then build on this 'floor' of competence through their own competence frameworks, where they can include specific competencies which are unique to their profession or area of expertise or require a higher level of competence in a particular skill if required. There are clear benefits to establishing core competencies. A transparent and accessible minimum standard would set the consumer's expectations, make interactions with lawyers less intimidating, and give them greater control over the service they receive. By providing consumers with a clear benchmark of expected competence, a consumer can make an informed decision to go elsewhere or remain with their current provider, if the service they are receiving is in line with the minimum standard. This would also bring law into line with other sectors, like healthcare, where it is clearly explained to consumers what each actor's role is and what they can expect of them.
20. There is also evidence that this approach would increase public confidence in the profession. In public panel research conducted by the LSB, the public identified a single competence framework as a measure that would give them greater confidence in the competence of authorised persons, if implemented alongside other measures like spot checks.⁴
21. We accept the points made by stakeholders that differences across the profession and between practice areas may sometimes require differing levels of competence in a particular skill, or a different set of competencies entirely.⁵ However, for the reasons provided above, we do not see this as a barrier to creating a set of core competencies. Whilst assumptions that a particular branch of the profession or practice area does not require a particular competency should be carefully scrutinised, these differences across the legal profession highlight why regulators should be able to set their own competence levels over and above, that base level guaranteed by a set of shared core competencies. We consider that the competence framework is capable of accommodating both approaches.

⁴ Community Research, '[Ongoing Competence in Legal Services: Research into Public Attitudes](#)' (2021), section 4.6. Cited in Legal Services Board, '[Draft Statement of Policy on Ongoing Competence – Consultation Paper](#)' (2021), para 54.

⁵ Legal Services Board, '[Draft Statement of Policy on Ongoing Competence – Consultation Paper](#)' (2021), para 55.

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)?

22. Whilst JUSTICE agrees that areas referred to are relevant and should be included in any competence framework, we consider that LSB could go further in identifying specific competencies which amount to “core” or “foundation competencies” that should be the subject of “minimum standards” across the profession.

23. At present, we consider that the areas identified are broad and open to inconsistent interpretation across the profession. Consequently, we are concerned that inconsistent interpretation will necessarily lead to inconsistent approaches and therefore potentially inconsistent standards. We appreciate that a flexible approach is required to ensure that the frameworks accommodate for the nuances inherent in the constituent parts of the legal sector. We also recognise that inconsistencies in standards across the profession, considering these nuances, is not necessarily a problem. Indeed, in some cases, it is essential for the proper functioning of certain sectors – that those standards are differentiated. However, that being said, we consider that there are certain key skills or behaviours (‘foundation competencies’) that are critical to all areas of the profession and therefore require some form of standardisation. Inconsistent standards in these areas could ultimately be detrimental to the end consumer.

24. For the reasons provided at Q4 above, JUSTICE considers that the ability to communicate with, and identify the needs of, lay users / consumers should be considered as a foundation competency and included explicitly within a shared competency framework. Our recent JUSTICE roundtable highlighted that this is a competency which applies across the profession. Despite its recognition by both the BSB and SRA,⁶ there is still a disconnect between legal professionals and lay people. Communication with lay users was one of the key issues explored by JUSTICE’s *Understanding Courts Working Party*.⁷ It found that members of the public often feel confused by legal terminology and the way in which legal professionals communicate with them. This impedes the effective participation of the lay person, making it more

⁶ See Bar Standards Board, [‘Professional Statement for Barristers: Incorporating the Threshold Standard and Competences’](#), (2016) at 3.3, and Solicitors Regulation Authority, [‘Statement of Solicitor Competence’](#), C1 and C2.

⁷ JUSTICE, [‘Understanding Courts’](#) (2019), Chapter 3.

difficult for them to understand what is going on in proceedings and to make a contribution to the process and its outcome. This consequently frustrates their access to justice and leads to disempowerment and disillusionment with the profession – often leading to dissatisfaction and therefore, complaints.⁸

25. Communication skills are particularly important as all lay people presenting before a lawyer or in a legal process are vulnerable to some extent.⁹ This is because they find themselves in an unfamiliar and intimidating environment. Legal professionals must be alive to this and adapt their communication skills accordingly to facilitate the participation of the lay person in their own proceedings. To this end, JUSTICE recommended a sector wide consultation to evaluate commonly misunderstood terminology and modes of address which confuse and exclude lay people.¹⁰ In the context of litigation and court room etiquette, we also called for professionals to adapt their questioning techniques to accommodate the needs and understanding of witnesses and defendants,¹¹ not just those who would formally be considered ‘vulnerable’. Whilst such recommendations are made in the context of court practice, we also consider that such lessons are equally applicable to the solicitor-client relationship and the forms of oral and written communication present within that dynamic. Therefore, we consider it important that there is dialogue across the profession about appropriate communication. By making communication with lay users and vulnerable persons a core competency, this would remove inconsistent approaches across the profession and thereby guarantee high standards in this area.

Assessing levels of competence in the professions

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?

26. Yes. Expected standards of competence alter over time as understanding of a practice area or good practice evolves. Routine data collection is vital to the LSB’s objective of ensuring ongoing competence, as it will encourage practitioners to remain abreast of developments in competence in their fields. As stated elsewhere in this Consultation

⁸ *ibid*, paras 1.8-1.9.

⁹ *ibid*, para 1.21.

¹⁰ *ibid*, Recommendation 27.

¹¹ *ibid*, Recommendation 33.

response, we also encourage open dialogue between regulators across the profession.

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

27. It could also be beneficial to incorporate the voice of the consumer by considering consumer feedback and undertaking robust evaluations. Consumer feedback is important for ongoing competence because it can inform learning and development needs, but it is not formally sought or used for this purpose across the legal services sector.¹² We also recommend that the LSB look to other consumer-driven professional sectors for best practice.

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)?

28. Yes, however JUSTICE would encourage the LSB to adopt a broad interpretation of the term 'vulnerable'. Indeed, JUSTICE considers that there should be less focus on 'vulnerability' per se, and more attention given to identifying and understanding the needs of clients and consumers generally, especially lay clients / consumers.

29. As highlighted in the answer to Q5 above, all lay people who find themselves in a legal environment or before a lawyer are vulnerable to some degree. Attendees at our recent roundtable therefore noted that the concept of 'vulnerability' can be unhelpful, as it encourages the idea that vulnerability only appears in a unique scenario or that it requires an ad hoc, unique approach in relation to a specific set of persons, circumstances and / or an adjustment that lasts only for a specific duration. The reality, however, is that many of the approaches adopted in response to "vulnerable users" would actually benefit *all* lay users. At the heart of adjustments made for users perceived to be vulnerable, is the intention to make the legal proceedings or conversation appropriate and accessible for that person. This is something that legal professionals should strive for, not just for those they perceive to be "vulnerable" but

¹² Legal Services Board, '[Ongoing Competence: Call for evidence themes and summary of evidence](#)' (2021), pp 23-24; 26-27.

indeed for all consumers / clients, and particularly those who are lay clients / consumers. All legal professionals should be trained to ensure that they are able to communicate with their clients / consumers in a way that facilitates access to justice and is responsive to their individualised needs. There is a concern that placing an over-emphasis on ‘vulnerability’ removes the universality of the principle that underpins the approach e.g., the intention to facilitate client understanding and engagement. It may lead certain professionals in certain areas of the profession to consider that they are less likely to come across “vulnerable persons” and therefore are less likely to engage with such competences. A notable example of this is training on questioning techniques for so-called ‘vulnerable witnesses’. Certain advocates are trained to adapt their questioning to ensure the witness understands the question and can give their best evidence. However, these questioning techniques would assist all witnesses to give their best evidence. The focus on vulnerability therefore unduly narrows the group of lay users benefitting from these measures.

Making interventions to ensure standards of competence are maintained

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

30. Yes. As stated in response to Q1 above, there are few centralised and formal mechanisms for the monitoring and enforcement of competence and even if these do exist, it is not clear that they are used consistently. For example, an attendee at our JUSTICE roundtable noted that although it is technically misconduct for a practitioner to take on a case involving a vulnerable or intimidated witness without having first received specific training, as explained in the case of *R v Grant-Murray*,¹³ they were unaware that any misconduct proceedings had ever been instituted for breach of this principle. It is essential for ongoing competence that regulators intervene to ensure standards of competence are maintained.

¹³ The Lord Chief Justice observed that “...It is, of course, generally misconduct to take on a case where an advocate is not competent. It would be difficult to conceive of an advocate being competent to act in a case involving young witnesses or defendants unless the advocate had undertaken specific training”: *R v Grant-Murray* [2017] EWCA Crim 1228, at [226]. There is a requirement for barristers upon renewing their practising certificate to confirm that they are trained in child questioning if they are undertaking youth court proceedings.

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)?

31. Engagement with the profession is already a measure which regulators have adopted successfully, as regulators have been working together to maintain standards of competence in areas perceived to be 'high risk'. For example, the BSB, SRA and CILEx have been collaborating to set out specific competencies required in the coroners' court¹⁴, and similar work has been undertaken by the SRA for solicitors practising in the youth court.¹⁵ The success of these projects suggests that this is an area where further cross-working could be beneficial.

32. Mandatory training was an idea discussed in detail during our JUSTICE roundtable, where attendees observed the low uptake amongst solicitors of training courses on vulnerability. For example, JUSTICE is aware that the Solicitors Association of Higher Court Advocates are frequently unable to fill their courses. Attendees noted that this was because the courses are frequently expensive and so unaffordable for legal aid solicitors. This has created a training gap between the solicitors profession and the Bar, where the courses offered are free and so take up has been much higher.

33. We note comments made by the SRA in 2020 that:

"we must balance the need to ensure standards with making sure we avoid restricting access to competent legal services. We do not wish to discourage organisations and individuals from delivering legal services by imposing standards which go beyond the threshold for effective practice..."¹⁶

34. JUSTICE supports the inclusion of mandatory training requirements as an effective means to ensure consistent standards across the profession. However, we highlight the need for measures to be introduced to ensure that mandatory training requirements do not negatively impact or discriminate against those within the profession. Mandatory training should be free so as to avoid excluding those who do not have the financial means and especially those who work in legal aid sector. Otherwise, were

¹⁴ See Legal Services Board, '[Draft Statement of Policy on Ongoing Competence – Consultation Paper](#)' (2021), p.26 and for example, Bar Standards Board, '[Resources for those practising in the Coroners' Courts](#)' (2021).

¹⁵ '[Youth Court Advocacy](#)' (Solicitors Regulation Authority)

¹⁶ Solicitors Regulation Authority, '[Response to the Legal Services Board's Call for Evidence: Ongoing Competence](#)' (2020)

professionals required to pay for mandatory training, this could exclude competent practitioners, whilst also increasing costs for consumers.¹⁷

35. Attendees at our roundtable also observed that rolling out mandatory courses would be a lengthy process, but the need to ensure ongoing competence is an imperative to be addressed now. Whilst free mandatory training courses is a sustainable solution for the future, short term fixes are also required.

Taking remedial action in response to competence issues

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

36. Yes. Regulators must have approaches for remedial action to ensure ongoing competence. However, we would encourage dialogue between regulators and the LSB to set similar thresholds for intervention and remedial action. Otherwise, there is a danger of arbitrary differences between different branches of the profession which would be confusing and detrimental for consumers. As described elsewhere in this consultation, it is common for consumers to come across a number of different legal actors within a dispute and it is important that, as far as possible, there is consistency between the mechanisms put in place by different regulators. We also consider that regulators must undertake proper evaluation of their system of remedial action to ensure that it is effective and leads to sustainable improvements.

37. However, for remedial actions to be effective, we also consider it imperative that the system for monitoring competence levels is also reviewed. This is a particular issue when users are particularly vulnerable. For example, research that has been undertaken in the immigration sector has highlighted that very few clients / consumers feel empowered to raise competency concerns or make complaints about their representatives for fear that it may negatively impact their legal case.¹⁸ JUSTICE considers that such concerns are likely to exist across the legal sector. It is therefore important that as well facilitating accessible processes for reporting concerns,

¹⁷ *ibid*

¹⁸ Mark Foster, Patrick Nyikavaranda and Anne Rathbone, '[Consumer Barriers to Complaints: A Research Report into Complaints about Immigration Advice](#)' (Refugee Action, January 2022)

regulators put in place mechanisms to review competence themselves such as peer review and spot checks.

Q14. We expect that regulators should consider the seriousness of the competence issue and any aggravating or mitigating factors to determine if remedial action is appropriate. Are there other factors that regulators should consider when deciding whether remedial action is appropriate?

38. We agree that regulators should consider aggravating and mitigating factors when determining the seriousness of a competence issue and deciding whether remedial action is required. However, we would encourage dialogue and cross-working between the LSB and regulators to identify a shared list of aggravating and mitigating factors. This will ensure that there is a consistent threshold of intervention across the legal services sector, avoiding any confusion for the consumer and the professionals involved.

39. Possible aggravating factors could include a history of repeat competence issues, or failure to take action to remedy concerns over competence. We also consider that the question of 'seriousness' should include a consideration of the possible impact of the competence issue on the particular client or consumer.

Q15. Do you agree that regulators should identify ways to prevent competence issues from recurring following remedial action?

40. Yes, as remedial action will only be effective if it reduces the chances of the competence issues arising again. As stated above, we encourage ongoing dialogue between the LSB and regulators when it comes to the adherence to competence. Not only that, but we consider that there should be cross-working across the legal sector in order to share best practice and to understand the different approaches taken by different regulators to target and remedy competence issues.

Equality Impact Assessment

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?

41. JUSTICE considers that there are other organisations who are better placed to answer this question. Nonetheless, we would strongly encourage that the views of those who may be affected by such changes are sought out with a view to understanding the issues at stake and introducing mechanisms and safeguards to prevent against detriment or discrimination. We also consider that flexibility should be incorporated within the new framework to allow for reasonable adjustments e.g., to assist those re-entering the profession. We also consider that proper evaluation should be carried out, following any measures being introduced, to monitor the impact of the changes discussed herein.

Impact Assessment

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

42. JUSTICE is of the view that any financial cost to regulators and regulated persons caused by these proposals will be outweighed by the benefits guaranteed via a system of ongoing competence. We consider that ensuring ongoing competence will not only promote competition in the legal services sector and increase public confidence, but it will also help to drive-up standards of client service delivery. In doing so, we consider that it will improve client satisfaction and ultimately, lead to fewer opportunities for complaint and consumer grievance. As discussed at Q1, by ensuring consistent baseline standards across the profession, consumer expectations will be better managed and met. Competence frameworks will better communicate to consumers what they should expect of legal professionals and will make individual professionals more accountable to delivering the same.

JUSTICE

21 March 2022