

Ongoing competence: Call for evidence

Response template



This template can be used to respond to the [call for evidence](#) for the ongoing competence project. Please send completed forms to the [project team](#).

Defining competence and competence assurance

Understanding what it means to be a competent legal professional and how competence can be maintained and assured over time is a core objective of this work.

We would welcome your views on what you think is needed to demonstrate competence, whether competence needs to be tested throughout the career of a legal professional and how it could be assessed. This may cover areas such as:

- the characteristics or skills that should be part of a competency framework
- the types of competence particular to different types or work or legal disciplines (e.g. barristers, legal executives)
- different models for competence assurance that you use or are aware of

We would welcome qualitative and quantitative evidence in particular on: determining the components of professional competence; approaches to competence assurance; the effectiveness of CPD and other methods of assurance.

The standard the Legal Ombudsman applies when determining complaints is that of a reasonably competent service provider – broadly this means that we would expect them to be able to perform the key functions of the service they are providing. This does not mean that we would expect a competent service provider to be able to deal with any and all eventualities – it is perfectly reasonable that unusual situations arise which may require assistance, or an expert view. The primary focus for us would be that the service provider does not hold themselves out to be an expert in a particular area of law, unless they are confident in doing so.

It would seem sensible to require a certain level of CPD from the profession in order to provide assurance that they are up to date with the area of law they are practising. Perhaps of more significance would be a requirement to demonstrate a level of competence if moving to a new area of law – for example, an individual may have qualified some time ago, but may have specialised in one area of law. Before expanding to offer additional services, there could be a requirement to demonstrate continued competence if a significant period of time has elapsed since qualification.

It is for the regulators to assure themselves of the continued competence of their regulated providers, however the Legal Ombudsman would be keen to understand what this currently covers, and whether this is solely focused on technical competence in areas of law, or whether this includes key skills.

Many of the complaints dealt with by the Legal Ombudsman relate to skills such as communication, interaction with clients, and complaints handling. We would be keen to see emphasis placed on client care training, both in terms of qualification and ongoing competence. This could include a requirement to attend complaints handling courses with the Legal Ombudsman, and/or a regular review to ensure that complaints handling procedures meet regulatory requirements, along with best practice.

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Consumer expectations of competence

Understanding consumers' perspectives on, and expectations of, competence in the legal services sector is crucial to our work in this area.

We would welcome your views on what ways consumers can have greater confidence that they have a competent advisor. This may cover areas such as:

- the ways consumers can make judgements on the quality of the advice or service that they have received
- what role consumer feedback could or should play in helping legal professionals to build their competence and helping to foster trust
- the frequency of competence checks that would reassure consumers
- different types of consumers, consumer problems or legal activities that are more likely to experience quality issues, or be vulnerable to greater harm from quality issues

We would welcome qualitative and quantitative evidence in particular on: meaningful ways to demonstrate competence to consumers; how professions can provide information to consumers on the quality they should expect; the relative risk and impact of poor quality advice on consumers.

Statistical information can be extremely useful in determining whether to instruct a provider, however this cannot be solely relied upon as being an influencing factor for consumers. We know that reputation and word of mouth is a key driver in choosing a provider.

One of the key issues in relying on recommendations and consumer reviews is that the legal services market is extremely outcome-focused. Whether or not the desired outcome of a legal matter is achieved will have a huge impact on the consumer's experience with that service provider, and will have a resulting effect on the tone and content of any review they may leave.

Word of mouth and reviews are important and will be considered by consumers. There is therefore a careful balance to be sought between firms publicising positive customer feedback (which may be perceived as biased and self-selected) and consumers relying solely on independent review sites, where there is a greater likelihood of dissatisfied customers warning others of their experience – some of which may be justified, and some of which may be heavily influenced by the outcome of their legal matter.

The number of complaints the Legal Ombudsman receives about immigration and asylum services is low compared to other areas of law (in 2018/19 we received 251 complaints about immigration services). However, the cases we do see show that when things go wrong, the impact on the people involved can be severe. We have seen people lose their homes, lose their jobs and being told to leave the UK, often separated from their families, through no fault of their own.

A number of the immigration and asylum cases seen by LeO show that the relationship between customer and service provider can be relatively informal; this can include meeting outside of the office, payments in cash, and/or correspondence via text. This is more so than in other areas of law we investigate. Clients in these situations tend to be in situations of extreme vulnerability. This, coupled with the urgency of the situation and potential barriers such as language and understanding of the process mean that these

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people may be at greater risk of quality issues. The Legal Ombudsman would therefore suggest that the LSB may wish to focus on this area of law in particular when assuring ongoing competence.

Competence assurance in the legal services sector

Understanding the current competence assurance frameworks adopted by regulators and the profession is important, as is confirming, qualifying and quantifying any examples of poor-quality services or suggested risk areas.

We would welcome your views on this, and it may cover areas such as:

- practice areas which do or could impose greater competency risks
- legal professionals that may be more at risk of competency challenges
- existing competency assurance methods used in the sector and their effectiveness
- the respective roles of regulators, providers and individuals to assure ongoing competence
- any potential barriers to assuring the competence of legal professionals

We would welcome qualitative and quantitative evidence in particular on: competence or quality issues for particular types of work; service and non-service-related issues experienced by consumers; the effectiveness of current competence assurance practices.

We would also welcome identification of potential evidence sources that are not readily available but that we could seek access to.

We would also welcome any evidence of competence assurance practices used in legal services sectors in other jurisdictions.

In terms of areas of law which may face particular challenges, the Legal Ombudsman often sees conveyancing cases where poor service is not discovered until much later, when a property is resold. This causes huge problems with trying to rectify issues, and also in trying to pin down what was the published guidance/good practice at the time. It is also an area of law where there are frequent new developments, and it is of particular importance to ensure the service provider understands good practice at that time. Conveyancing complaints also account for around a quarter of the Legal Ombudsman's work.

The Legal Ombudsman also sees a higher proportion of complaints which relate to the competence of the service provider in cases that involve litigation. Because the outcome of these cases is often determined in court on the strength of the arguments put forward, there is often a perception amongst clients that, had the individual handled the argument better, the outcome would have been different.

We also see complaints arising where much of the work on the file has been completed by a trainee, or a supervised individual. These complaints tend to attribute the outcome to the involvement of a 'less qualified' individual, and a belief that they were not supervised closely enough. There is the potential to be clearer with clients by providing assurances at the outset about how much work may be completed by trainees, and what checks and assurances are in place.

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Competence assurance in other sectors

Understanding what other sectors do to assure ongoing competence is useful because it helps us to learn what has worked well in other professional services sectors and identify any opportunities to adapt the approach in legal services.

We would welcome your views on what ways the legal services sector can learn from the competence assurance approaches adopted in other professional sectors. This may cover areas such as:

- methods to gain competence assurance that have been tailored to different professional environments
- the benefits to consumers and the profession of different competence assurance schemes e.g. revalidation, observation or simulation
- how assurance data is collected, recorded and made accessible to consumers

We would welcome qualitative and quantitative evidence in particular on: consumer views on the benefits of competence assurance schemes; the robustness of different methods for competence assurance; the competence assurance systems which produce the most reliable assessments.

We welcome evidence from the sectors provided as examples above as well as other sectors not specified in this paper.

Please fill in the text box below using the prompts above, providing links to any evidence referenced. Alternatively, supporting documents (e.g. reports, datasets) can be provided separately.