



# Legal Services Education and Training Review:

## Demonstrating Competence Identifying Incompetence

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## Context: The Legal Education and Training Review

‘LETR is required to ensure that the future system of legal education and training will be effective and efficient in preparing legal service providers to meet the needs of consumers’.

(Legal Education and Training Review website)

## Some questions

- How should competence be tested?
- At what stage(s) should competence be tested?
- Is there a problem with competence that needs to be fixed?
- How would we know if there was a competence problem?
- Is the current framework able to distinguish between good and bad?
- Who should we test for incompetence?
- What role does CPD play in ensuring on-going competence?
- When is CPD adequate?
- How should CPD be assessed?

## What is competence?

- A minimum standard of (historic) ability – e.g. acquiring a qualification (Eraut, 1994)
- A continuing standard of performance using an occupational or socially expected norm (BRI Inquiry 2001, 25.3)
- A mid-point between novice and expert (Dreyfus and Dreyfus, 1986)
- Performance which does not merit civil action, sanction or barring from practice (Cooper, 1991).

## Professional competence

"Work done by the professional is usually distinguished by its reference to a framework of fundamental concepts linked with experience rather than by impromptu reaction to events or the application of laid down procedures. Such a high level of distinctive competence, reflects the skilful application of specialised education, training and experience. This should be accompanied by a sense of responsibility and an acceptance of recognised standards."

(The Hayes Committee, HMSO 1972)

## Competence as process

Building on prior definitions, we propose that professional competence is *the habitual and judicious use of communication, knowledge, technical skills, clinical reasoning, emotions, values, and reflection in daily practice for the benefit of the individual and community being served.*

(RM Epstein, EM Hundert 'Defining and Assessing Professional Competence' *Journal of the American Medical Association* 226)

# Is there a problem?

- Complaints
- Disciplinary proceedings
- Research
- Informed observation
- Anecdote



“The scheme is absolutely necessary to ensure advocates are suitably qualified, experienced and skilled to represent defendants properly at every level of seriousness at which charged. It will prevent those who are not good enough to do it thereby jeopardising their client’s interest, the public interest and the court process”.

*Anonymous barrister quoted in Quality Assurance for Advocates: Working with the professions to deliver a framework for better advocacy (LSC Discussion Paper, February 2010)*

## Are there effective, efficient and economic solutions?

- Education and training
- Higher standards of entry
- Specialisation
- Quality assurance
- Competence assessment
- Continuing professional development

## Standards methodology

"A competence is a description of something which a person who works in a given occupational area *should be able to do*. It is a description of an action, behaviour or outcome which a person should be able to demonstrate... If an element states that a candidate should be able to do something, then the evidence needed is a demonstration."

(MANSFIELD, R. (1989b) *Functional Analysis - A Personal Approach*, 'Competence and Assessment' (quarterly bulletin of Employment Department's Occupational Standards Branch), Special Issue 1, December 1989, p5

## Quality Assurance for Advocates: Competency Framework (1)

- Analysis
- Organisation
- Interaction
- Presentation
- Leading

## Quality Assurance for Advocates: Competency Framework (2)

A: ANALYSIS A.1. Accurately identifies key legal and factual issues	
1	Presents and questions only material witnesses
2	Asks only relevant questions
3	Makes only relevant submissions
A.2. Adopts appropriate structure and sequence	
1	Has a clear strategy for the case
2	Case strategy is supported by questions asked and evidence called (see D2 below)
3	Develops arguments in a logical order
A.3. Responds appropriately to new evidence	
1	Makes appropriate objections and/or submissions
2	Asks appropriate questions
3	Takes appropriate advantage of new material

‘Professional competence requires a firm educational grounding, followed by a period of formal training to acquire the relevant knowledge and skills in the workplace. Thereafter, continued competence rests on a combination of education, continuous development, confidence and experience. It depends on the motivation of individual professionals to learn and develop and the extent to which their employer supports them and enables them to do so. It also depends on the professional standards which they are required or expected to meet, and on the wider systems for ensuring that those standards are adhered to.’

*(Learning from Bristol: the report of the public inquiry into children's heart surgery at the Bristol Royal Infirmary 1984 -1995. (CM 5207) para. 5.*

## A competence checklist for lawyers

- firm educational grounding, followed by a period of formal training
- education, continuous development, confidence and experience
- motivation of individual professionals to learn and develop
- employer support
- professional standards
- wider systems for ensuring that those standards are adhered to

## ‘Wider systems’

- Transparency
- Quality assurance mechanisms
- Simplification
- Meaningful specialisation
- On-going competence



## ‘On-going competence’

‘CPD systems need to be strengthened. The entry requirements for lawyers do not provide a lifetime guarantee of quality, as has been accepted in other professions. There is a strong case for introducing more stringent mechanisms, including periodic re-accreditation in some practice areas.’

Legal Services Consumer Panel

*Quality in Legal Services (2010)*

## Accreditation

A competent practitioner is defined as:

‘a practitioner who can identify and advise on a wide range of personal injury and related issues and who does not perform work that is outside of his/her current knowledge, skills and expertise. A competent practitioner will seek appropriate advice and assistance as may be required to enable them to provide a full and effective legal service to their client.’

Law Society Personal Injury Accreditation Scheme

## Continuing Professional Development (CPD)

'a course, lecture, seminar or other programme or method of study (whether requiring attendance or not) that is relevant to the needs and professional standards of solicitors and complies with guidance issued from time to time by the SRA'.

(Solicitors' Training Regulations 2009)

## Criticisms of 'first wave' law CPD regimes

- ignore theories of professional development
- encourage passive learning
- unrelated to the development needs of the individual
- do not exploit the potential for workplace learning
- do not promote the exercise of professional discretion
- Ignore the importance of reflection
- ignore the significance of ethics in professional practice
- have weak monitoring arrangements
- are out of step with comparable professions

## The EUSCCCIP Framework

suggests that a CPD system should allow individuals to:

- review and explore their professional and personal careers/competences;
- discover and set down their individual strengths and weaknesses;
- make and use a development plan; and
- record their intentions and provide verification that they have conformed to their plans and achieved their targets.

(European Project for the Use of Standards of Competence in CPD for Construction Industry Practitioners)

## A regulatory agenda for CPD?

- Should the scheme move from inputs (hours) to outcomes (results)?
- Should there be mandatory requirements covering skills, knowledge, professional values, behaviour and ethics and reflection on experience?
- Should mandatory CPD be introduced for those holding specified roles in the new regulatory structure (with certification)?
- What reporting/ assessment arrangements might be most effective and how should these link to OFR?

## Quality risk mitigation and proposed regulatory interventions

- Demonstrating contemporary knowledge and awareness of practice = Outcomes focused / assessed CPD / authorisation
- Demonstrating contemporary competency and ability to practice = Accreditation schemes / minimum competency assurance
- Assured quality or competency of defined aspects of service provision = Evidenced / accredited quality marks

LSB Consultation Paper “Approaches to Quality” (available at [http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/open/index.htm](http://www.legalservicesboard.org.uk/what_we_do/consultations/open/index.htm) )

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## The Panel

Chris Kenny has been Chief Executive of the Legal Services Board since January 2009. Prior to this he held senior roles at the Association of British Insurers and OFTEL following his early career at the Department of Health and Treasury. Chris is also non-executive Director of Ombudsman Services Ltd, which provides ADR services to the telecoms, energy, property and copyright licensing industries.

Roger Bamber is joint Head of the Family Law Team at Mills & Reeve, a mediator and arbitrator. He is building the Family Law Hub – an online database and provider of CPD points - for family law practitioners.

Toni Fazaeli has worked as a teacher and inspector and is now Chief Executive of the Institute for Learning (IfL), the professional body for teachers in the Further Education and Skills sector. IfL is at the forefront in using CPD to develop effective practice: [www.ifl.ac.uk/cpdreview](http://www.ifl.ac.uk/cpdreview)

Matthew Nicklin is a London-based barrister called in 1993 and appointed a Recorder of the Crown Court in October 2009. Since January 2008 he has been a member of the Bar Standards Board.

Neil Wightman is Head of Housing Needs for Lambeth and Joint Chair of the Association of Housing Advice Services. Before 20 years in local government he was an advice worker at Sheffield and Clapham Citizens Advice Bureaux. He is a member of the Legal Services Consumer Panel.

Andy Boon was a member of the Law Society's training framework review group, consultant to the Law Society on legal ethics and to the SRA on CPD. He was formerly Chair of the BVC Board and vice chair of the BSB Education and Training Committee.