

BAR STANDARDS BOARD

REGULATING BARRISTERS

Bar Standards Board response to the LSB policy statement on ongoing competence

Introduction

1. The Bar Standards Board welcomes the focus that the LSB is giving to the ongoing competence of legal professionals. It is a core function of front-line regulators to set competency standards for those they regulate and to ensure that those standards are being met and maintained. The BSB has a range of regulatory tools in place and a well-developed programme of work designed to meet that objective and which align with the outcomes set out in the LSB's policy statement. The table at Annex 1 provides detail on that programme of work and the timeframes for completion.
2. We expect through the completion of this programme of work to have met the majority, if not all, of the LSB outcomes by mid-2024.

3. In summary:

Outcome A - Setting competency expectations

4. The [Professional Statement](#) describes the knowledge, skills and aptitude that barristers should have as they start their careers at the Bar. The statement is embedded in the curriculum for vocational training and the requirements for satisfactory completion of pupillage.
5. In addition, where there is evidence of concern in standards of practice, we may set specific competency expectations. Our work on [Youth Courts](#) and [Coroners Court](#) are examples of this.

Planned programme of work

6. We will review the Professional Statement during 2023/24 to ensure that it accurately reflects current practice requirements both at the point of authorisation and throughout a barrister's career. To meet this outcome, we will amend the Professional Statement, setting clear expectations for barristers to maintain and build on competence throughout their careers.
7. In addition to this, we will also consider whether new competences are required to:
 - address the skills required to carry out remote advocacy
 - deliver high quality services utilising an increasing amount of technology;
 - fully embed the skills involved in reflective practice; and
 - improve on ethical standards expected of practice at the Bar.
8. We will, through our on-going review of Continuing Professional Development and the reform of our regulation of early years of practice at the Bar, further embed the Professional Statement into practice throughout a barrister's career.

Outcome B – regularly determine levels of competence in the profession and identify areas for improvement.

9. Through our enforcement activities, supervision work, thematic reviews and research programme we capture data and intelligence about standards of practice at the Bar and take targeted, proactive interventions where there is need to do so.
10. We see the judiciary as an important stakeholder in maintaining standards of practice at the Bar and have agreement from the Lord Chief Justice to convene periodically a panel of judges to provide feedback on regulatory issues.

Planned work

11. We have measures in place, such as our Risk Forum and the various internal and external networks, which inform our regulation. Over the next 12 months, we will enhance our intelligence gathering and analysis capability to improve our understanding of standards of practice and our ability to take proportionate, focused actions to address competency concerns.
12. We will strengthen our intelligence sharing arrangements with other regulators and organisations such as the Legal Ombudsman and will work with them to identify trends and address common competency issues, whether for individual barristers or thematically based on for example practice areas, location or year of Call.
13. We will review our enforcement and supervision processes to ensure that intelligence is captured consistently and that our regulation is joined up and responds proactively to issues as they arise.

Outcome C – targeted interventions to ensure standards of competence are maintained.

14. Our current arrangements allow us to make interventions where we are concerned about competence or standards of practice. Our work on Youth Courts and Coroners Court, highlighted above, are examples of this in action. Further, through our relationship management approach to supervision, we engage closely with those Chambers and barristers which we assess as high or medium risk. This enables us to agree actions to address concerns and to monitor progress against those actions. Our recent Regulatory Return exercise included questions on professional competence and we have used that to inform our policy development and to build our risk profile of the profession.
15. We reformed the previously prescriptive and hours-based approach to CPD in 2017 to make it more outcomes focussed, flexible and with a greater focus on continuous improvement and reflective practice. We issued guidance to the profession on the new approach and monitor its compliance through our supervision of chambers.
16. We carry out thematic spot checks of competence declarations given at the annual authorisation to practise.
17. Whilst market forces is not the perfect solution to weed out incompetent practice, it is, given the predominantly referral nature of the Bar, a helpful starting point. Most barristers are working in a competitive environment in which their performance is regularly scrutinised by instructing solicitors and clients (particularly commercial clients). Many of those barristers not subject to direct competitive pressure will be

instructed by government agencies – the CPS for example – which monitors performance. We can, accordingly, take assurance from this competitive environment and oversight (which no doubt helps to explain the very limited evidence of professional incompetence at the Bar).

Planned work

18. Our ability to make targeted interventions will be enhanced by our work to strengthen our data and intelligence capability highlighted under outcome B above.
19. In addition, we are planning to review our approach to CPD during 2023/24 with a particular aim on strengthening our expectations on the gathering of feedback on practice and greater use of self-reflection. We will issue guidance to the profession to support them in understanding better the benefits of reflective practice. Allied to this, we will undertake thematic reviews of CPD compliance and take remedial action where there is evidence of a concern. We will also revisit whether a purely outcomes focussed approach to CPD provides sufficient structure for learning and development at the Bar.

Outcome D – remedial action

20. Serious competence concerns about individual barristers are currently addressed by the BSB through disciplinary action. Low level concerns are picked up through our supervision of chambers and addressed locally.
21. Our thematic work has resulted in the development of specific training to support competency expectations we have set in high risk areas of practice. For example, our Youth Court and Coroners Court competency statements are embedded into training provided to both barristers and solicitors. It is through the recognition of a requirement for specialist skills and the establishment of training to support those skills, that good practice gets brought to life and communities of practice committed to high standards are formed.

Planned work

22. We recognise though that we need to have a greater range of tools available to deal with concerns about professional competence. Enforcement action will deal with the instance of professional incompetence but not necessarily the underlying cause. We therefore need a more nuanced approach that seeks to give support to barristers who need to improve their standards of practice and which leaves disciplinary action for the most serious and persistent cases.
23. As part of that broader picture, we believe that the profession collectively has a responsibility to maintain standards of practice. We began therefore in Autumn 2022 to develop our expectations of the role of Chambers in, amongst other things, maintaining standards at the Bar. We have held roundtables across the country to capture views and to test ideas. From these discussions, we believe that Chambers (and employers) are best placed to address competency issues within a regulatory framework that we set. We will, through our supervision activity, monitor how effectively this framework is being applied and step in where there is evidence of a need to do so. Within this approach, we would retain the right, as now, to address serious or persistent competency concerns directly.

24. We will progress this work during 2023/24.

Bar Standards Board

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