



## **Draft statement of policy on ongoing competence**

ISSUED 03/2022

ICAEW Professional Standards welcomes the opportunity to respond to the Legal Services Board's draft statement of policy on ongoing competence issued 8 December 2021, a copy of which is available from this [link](#).

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators, and businesses. It leads, connects, supports, and regulates over 156,000 chartered accountant members in over 160 countries.

This response dated 8 March 2022 reflects the views of ICAEW as an Approved Regulator for the reserved legal service of probate. ICAEW Professional Standards is the regulatory arm of ICAEW. Over the past 30 years, ICAEW has undertaken responsibilities as a regulator under statute in audit, insolvency, investment business and most recently, legal services. In discharging its regulatory duties, it is subject to oversight by the Conduct Committee of the Financial Reporting Council (FRC), the Insolvency Service, the Financial Conduct Authority (FCA), the Legal Services Board (LSB) and the Office for Professional Body Anti-Money Laundering (OPBAS).

Amongst ICAEW's regulatory responsibilities it is;

- the largest Recognised Supervisory Body (RSB) and Recognised Qualifying Body (RQB) for statutory audit in the UK, registering approximately 2,500 firms and 7,000 responsible individuals under the Companies Act 2006.
- the largest RSB for local audit in England. It has eight firms and over 90 key audit partners registered under the Local Audit and Accountability Act 2014.
- the largest single insolvency regulator in the UK, licensing some 840 of the UK's 1,600 insolvency practitioners as a Recognised Professional Body (RPB) under the Insolvency Act 1986.
- a Designated Professional Body (DPB) under the Financial Services and Markets Act 2000, currently licensing approximately 1,900 firms to undertake exempt regulated activities under that Act.
- a Supervisory Body recognised by HM Treasury for the purposes of the Money Laundering Regulations 2007 dealing with approximately 11,000 member firms.
- designated an Approved Regulator and Licensing Authority for the administration of oaths and probate under the Legal Services Act 2007 (the Act) currently accrediting approximately 350 firms to undertake the probate activity.

## GENERAL COMMENTS ON THE PROPOSED POLICY

1. We welcome the Legal Services Board's (LSB's) proposals regarding ongoing competency, which develop standards required to maintain and sustain the quality of service for the consumers of legal services. This is an area that the ICAEW has long advocated for the LSB to include in their work. In addition, we welcomed the call for evidence in July 2020 as an essential first step towards securing that goal. These proposals present realistic next steps to build on that evidence and develop appropriate policy.
2. In our response to the call for evidence, we presented several ways that the ICAEW ensures ongoing competence in its role as a regulator of accountancy and within the regulated audit area. In the case of audit, these take the form of competencies set out in International Educational Standard number 8 (IES8), and these are actively used in assessing continual professional education needs. These are monitored through a combination of required self-declaration and ICAEW inspection. In addition, in recent months, we have been exploring options with the FRC and developing a more comprehensive structured framework for the application of CPD for all ICAEW members internally, whether carrying out regulated work or otherwise, which will involve a move to minimum numbers of verifiable hours. The LSB's proposed policy helps inform this work. In addition, it should offer some insight into possible approaches to securing LSB desired outcomes.
3. There is a practical difficulty in setting a framework that the proposed policy does not capture or consider. In developing our audit framework, we have taken into consideration that the ICAEW regulate a diverse group of professionals who are subject to regulation at a statutory and voluntary level. This mix, resonant particularly in alternative business structures, means that those working together in licensed firms may have different obligations that they must meet that have been set by another professional or regulatory body. Thus, we have identified three dimensions in the oversight of CPD;
  - a. The requirements of its members by ICAEW
  - b. The requirements of other professional bodies that apply to their members who are licensed for a reserved activity by ICAEW
  - c. The lack of requirement for those who are not members of professional bodies who nevertheless meet the qualification criteria for licensing for a reserved activity by ICAEW
4. Within our statutory regulations, we require that all licensed individuals attain the minimum levels prescribed by ICAEW and higher if required by their own professional body. This is, however, difficult to police. So much so that the Irish audit regulator required that a memorandum of understanding be put in place between the professional bodies to ensure that appropriate exchange of information took place. A similar requirement may be necessary to underpin the developing LSB framework.
5. We agree with the aspiration set out in paragraph 41 of the consultation document that flexibility is required to allow for the differing compliance structures of the individual regulators to be adapted to meet the outcomes. However, the application of specific measures noted in paragraph 43, be it on a comply or explain basis, risks straying into output specification where

one size does not fit all. We believe that tactical areas could be better expressed as illustrations, and the outcomes held at a suitable high-level.

## QUESTION RESPONSES

### **Question 1: Do you agree with the proposed outcomes?**

7. We support the proposed outcomes. However, we do have an observation regarding the scope and response of the outcomes. We feel they may not take account of changes in the economic, technical and IT environment, which means that licensed practitioners' skills and competence at the time of initial registration may need to be upgraded for continued licensing and that some evidence of updated competence is needed. This may, in part, be addressed by the second bullet in paragraph 40 but not clearly so.

### **Question 2: 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?**

8. We agree that regulators should be able to demonstrate how they have arrived at any decisions when implementing new requirements or assessing existing processes.

### **Question 3: Do you agree with the LSB proposal that each regulator sets the standards of competence in their own competence framework (or equivalent document(s))?**

9. While we agree with the proposal, we can also see value in developing a common framework of broadly defined shared competencies. A common framework would provide a unified starting point to help get the initial process off the ground for all regulators to build on when developing standards for ongoing competence that best reflects their scope of regulation.
10. The LSB has looked at ongoing competence in other jurisdictions and areas of regulation. We agree with this approach and have found the experience of other regulators and examples of existing competency frameworks in different sectors to be helpful. For example, in our response to the 2020 call for evidence, we noted the competency framework issued by the International Accounting Education Standards Board (IAESB) in the International Education Standard No8 (IES8)<sup>1</sup>, which sets out the competencies required of an audit partner. Some of these are bespoke to audit, but other competencies you would expect of any profession, such as IT competence and ethical standing. As a starting point such existing frameworks approach to universal competencies could be adapted and form the basis of a shared framework document.

### **Question 4: If not, would you support the development of a set of shared core competencies for all authorised persons?**

11. As indicated in the previous response, we recognise that a framework document of some type is required to provide a common starting point but would caution against being too prescriptive as to what should apply.

### **Question 5: Do you agree with the areas we have identified that regulators should consider (core skills, knowledge, attributes and behaviours; ethic, conduct and professionalism; specialist skills, knowledge, attributes and behaviours; and recognition that competence varies according to different circumstances)?**

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<sup>1</sup> IAESB-IES-8-Professional-competence-for-engagement-partners.pdf (ifac.org)

12. Whilst the list is a good baseline, we would note that, increasingly, a practitioner needs to be aware of other issues, such as IT developments that can affect how the practice is run and how clients may have been communicated with. So, for example, the LSB's work on empowering consumers may also point to firms and authorised individuals being required to demonstrate that they have the necessary skillset in marketing and communication to be able to meet other compliance requirements.

**Question 6: 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?**

13. We agree that there needs to be feedback mechanisms for regulators to understand the impact and success of their regulatory framework. The ICAEW has a well-developed and effective quality assessment process that provides insight into the operation of firms and authorised individuals. Information secured through existing processes already provides assurance in verifying that our regulatory requirements and approach remains proportionate and effective.
14. We agree that there needs to be mechanisms to assess competence as a regulatory requirement. However, we are mindful of the need to ensure that new requirements for the collection of information are proportionate and considered in light of existing requirements for regulators and practitioners. Further requirements have the potential to increase the cost of regulation an increase that would ultimately have to be met by the consumer. Similarly, time and resources spent meeting additional requirements are likely to make some practice areas less attractive, reducing choice and potentially limiting access to justice
15. The ICAEW is currently engaged in meeting similar challenges in audit and accountancy.

**Question 7: Do you agree with the types of information we have identified that regulators should consider (information from regulatory activities; supervisory activities; third party sources; feedback)?**

16. We broadly agree with the types of information identified. ICAEW already has information on its probate accredited population from regulatory returns and supervisory activities that enable it to assess risks associated with service quality and competency.

**Question 8: Are there other types of information or approaches we should consider?**

17. No comment.

**Question 9: 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)?**

18. Any new requirement is designed to ensure the competency of the regulated person or firm and, by default, to protect the consumer. As a regulator for probate, we acknowledge that it is more likely than not that consumer seeking services from ICAEW authorised firms or individuals have a higher likelihood of being vulnerable. We agree that the type of work undertaken and associated risk profile of consumers accessing those services is a relevant factor in assessing required standards for ongoing competence.

19. While the consultation rightly focuses on the quality of work and the technical knowledge and skill level to support a second factor is the competency of the practitioners themselves from a physical well-being perspective. The latter brings much more heightened risk, but the consultation document does not delve into this area. The latter also requires some upfront risk management, whereas the other competency areas are more reactive. So adequate provisions for alternates in case of illness, identification at an early stage of possible difficulties, and a well-being support programme are all relevant considerations for a competency framework.
20. If the suggestion is that a high-risk practice area where the outcome for a consumer of negligent work linked to a lack of competence could be particularly harmful, we agree that the risk profile of these areas should be higher. It is an approach that ICAEW are currently considering in their overhaul of current CPD requirements for members and those they regulate by statute. However, it does not always follow that the competency requirement should be different within a practice. There may be consequential effects from such a requirement that compromise some other regulatory objectives.

**Question 10: Do you agree with the LSB proposal that regulators adopt interventions to ensure standards of competence are maintained in their profession(s)?**

21. Yes. It is helpful that the LSB in the consultation document has provided a series of examples but not prescribed. ICAEW has its own interventions under current arrangements, but these are under review and will be informed by this consultation.

**Question 11: 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; re-accreditation)?**

22. We can see value in the majority of the types of measures identified. However, we are uncomfortable with the concept of re-accreditation. This is potentially an incredibly onerous exercise that would require considerable resources and associated cost. As noted elsewhere regulations that require such an investment of resources will increase the cost of regulation potentially reducing the attractiveness of supplying legal services, limiting the marketplace, increasing fees paid by consumers and ultimately access to justice. There may be an application in some targeted regions of vulnerability, as illustrated in the consultation.

**Question 12: Are there other types of measures we should consider?**

23. We have no comment.

**Question 13: Do you agree with the LSB proposal that regulators develop an approach for appropriate remedial action to address competence concerns?**

24. The remedial approach can be a combination of additional training and enforcement where there are persistent shortcomings. We welcome the reference to best practice as an improvement regulator in this section and the tone of the consultation being around betterment rather than sanction.

25. Shortfalls in the sustainability of competence in ICAEW regulated firms are brought to our attention by several possible routes, for example, through a complaint from the public about the service provided by one of our accredited firms or uncovered at a visit conducted by the Quality Assurance Department (QAD) whereby real concerns were raised about the practitioner.
26. The remedial part is answered by procedures we already have to investigate our members. Case managers deal with these and refer to the Probate Committee for action as appropriate. The remedies available to the committee can be penal or closer monitoring over the next couple of years to ensure undertakings are complied with.
27. Remedial action can also communicate to all firms of areas identified by QAD in their visits where the practice is weak. In addition, there are examples of best practices by other firms and practitioners. These are typically communicated through Probate News and support tools on the ICAEW website.
28. In short, we agree with the LSB; as noted elsewhere the ICAEW has established processes for remedial action to address competency concerns, and we welcome the reference to best practice as an improvement regulator in this section and the tone of the consultation being around betterment rather than sanction.

**Question 14: Do you agree that regulators should consider the seriousness of the competence issue and any aggravating or mitigating factors to determine if remedial action is appropriate?**

29. (This question is expressed differently in the document's body versus that of the appendix. However, we have responded based on the appendix as the main document lacks a question 16.)
30. This is best practice and meets the requirements of the rule of law and the Hampton principles. In the case of ICAEW, it is part of the sanction's guidance that the Probate and Disciplinary Committees are expected to follow.

**Question 15: Are there other factors that regulators should consider when deciding whether remedial action is appropriate?**

31. Other factors we believe should be considered include.
  - a. A general assessment of risk concerning the type of service supplied and vulnerability of the consumer
  - b. The availability of alternates to cover a practice, especially where the practitioner may be unexpectedly unable to provide services
  - c. The role and activities of the Head of Legal Practice (or compliance officer for finance and administration) within the practice



**Question 16: Do you agree that regulators should identify ways to prevent competence issues from recurring following remedial action?**

32. The regulator's task is to ensure that the authorised person or firm meets the requirements to be authorised and continues to do so. It is for the authorised person or firm to ensure that they continue to meet all obligations. Any failure requires an appropriate response to either remove the authorisation from the firm or individual or achieve compliance.
33. Any failure is a cause for concern and action is required. However where a failure to comply with the regulatory obligations can be attributed to a particular issue, it is reasonable to expect that once the root cause is identified and rectified that the failure will not reoccur. In most instances we would expect the firm or individual in rectifying the failure to put in place measures to prevent a reoccurrence. Nevertheless, once rectified and compliance is achieved then the ongoing burden to show compliance returns to the authorised person or firm.
34. In a risk-based system any failure will impact the authorised person or firm's risk profile, this may result in additional checks, for example, an increased frequency of compliance visits or paper-based exercises to ensure ongoing compliance. Further failures will undoubtedly result in a reconsideration of authorisation.
35. We would not envisage any new requirements for firms and practitioners to show compliance with ongoing competency requirements to require a change to our current approach. It would remain the firm or authorised persons burden to show compliance with all requirements.

**Question 17: Do you agree with our proposed plan for implementation?**

36. In the implementation statement, there is no mention of the practitioner to which ultimately this policy applies. Developing any new framework and its introduction can be a lengthy process. Practitioners must know the requirements and have time to prepare before their introduction.
37. We agree that the eighteen-month timeline indicated is sufficient to develop and implement a new competency framework. However, the apparent expectation that regulators will also be able to assess and report on compliance or the effectiveness of the framework during this period is of concern. Typically, given the size of the ICAEW regulated community we would expect it to take longer than the specified period to secure the a sufficient level of evidence to make any determination as to the relative success of the new regulations.

**Question 18: Is there any reason why a regulator would not be able to meet the statement of policy expectations within 18 months? Please explain your reasons?**

38. See response to the question 17. The lead time for these proposals to fully work through may take longer, though crucial aspects of a policy should be well in place within the eighteen months.

**Question 19: 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 broader equality issues and interventions that you want to make us aware of?**

39. Equality impact assessments under the legal services statutory objectives extend beyond the nine protected characteristics to the type of business that supplies legal services. This includes



sole practitioners as well as multi-partner firms. These requirements need to be proportionate to the sole practitioner seeking a comprehensive service offering. If applied to a too deep a level, this would force the all-around practitioner out of business and concentrate market power in niche providers. Training for such providers should focus on where their technical boundaries are and when they should refer work to specialists.

40. The competencies outlined in figure 1 do not directly address diversity. However, where a practitioner is advising individuals where their characteristics are intrinsic to the advice being sought, there is an inherent requirement to understand the relevant culture and empathise with the client, for example, on Islamic Finance or intestacy rules for Hindus. This perhaps needs to be articulated in some fashion.

**Question 20: Do you have any comments on the potential impact of the draft statement of policy, including the likely costs and anticipated benefits?**

41. We have expressed concern about the over-engineering of any response that would result in an added cost for practitioners and regulators. There is an acknowledgement of this pressure within the consultation document. Still, equally, some of the outcomes, if pursued too rigorously, would result in this.

**Question 21: Do you have any further comments?**

42. No.