

SRA Consultation – Training for Tomorrow – A Competence Statement for Solicitors

12th January 2015 - ILPA response

The Immigration Law Practitioners' Association (ILPA) is a registered charity and a professional membership association. The majority of members are barristers, solicitors and advocates practising in all areas of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members. Founded in 1984, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law through an extensive training programme, disseminating information and by providing evidence-based research and opinion. ILPA is represented on advisory and consultative groups convened by Government departments, public bodies and non-governmental organisations.

General comments

ILPA makes the following general comments about the proposed approach of the Solicitors Regulation Authority which are outlined below:

- There is no information at this stage on the assessment process for demonstrating competence against the standard. It is very difficult to comment on the statement without the assessment framework being clear.
- The Solicitors Regulation Authority should ensure that the design of the assessment process and of its method of assessment take into account the views of practitioners and practitioner organisations. Account should be taken of the likely cost to practitioners and their employers. The greater the extent to which practitioners identify that the new competence and assessment model is providing real quality control, and to which that assessment provides support for their developing skills, the greater the 'buy-in' from the profession is likely to be and the more the new approach is likely to drive up standards, promote a culture of excellence, and achieve its primary objectives
- The assessment of professional standards should be based on a set of clear competencies. We welcome the moves to work closely with the Bar Standards Board. We consider that it is also appropriate to work with the Chartered Institute of Legal Executives (CILEx) and other regulators, for example in immigration and asylum law, the Office of the Immigration Services Commissioner (OISC), and so we should like to request that the Solicitors Regulation Authority works closely with these other regulators to promote consistency and ensure that consumers can compare services offered.
- ILPA would also be interested in the arrangements to ensure that there are sufficient numbers of enforcers ready to police the competency of any given practitioner.

Question 1: Does the competence statement reflect what you would expect a competent solicitor to be able to do?

In terms of general feedback ILPA remains concerned that if the key purpose of the new competency standard is to diversify the routes to qualification then a lot more will need to be considered as to how these matters can be evaluated. If it is intended to raise standards higher, what is the objective evidence to show that at present the standards are not being met across the board.

Further, will this inevitably mean that qualifying becomes more difficult and/or fewer training contracts are available which may have an impact in terms of equality of opportunity for certain groups by reference to race, gender, sexuality or age.

In addition is there a danger that a checklist will lead to a reduction in the achievement of the highest standards replaced by a modicum of mediocrity.

Comments on specific competencies

A5 – yes but what does this actually mean?

B1 (c) against what criteria?

B1 (d) how?

B3 and is this in a vacuum or by reference to the situation they are in so far as objective access to the courts/funding etc.

B5 is written advocacy acceptable where oral advocacy is a skill that a candidate does not possess or does that mean an individual is adjudged as not meeting a competent standard.

B5 (f) does this include other parties' witnesses and if so how objective is the term "appropriately"

B6 does this take any account of the relative bargaining positions of the parties which are not always going to be equal

D1 (a) how can you ensure it is achieved. You can use best endeavors but cannot possibly ensure it

D1 (d) technical terms may be required when communicating effectively especially with represented other parties or with courts

D2 (e) in a vacuum or by reference to their resources

D2 (h) always or only where relevant

D3 (f) this may be good practice but is it a requirement to be able to practice

Question 2: Are there any additional competences which should be included?

ILPA is aware from cases within the asylum and immigration field that the representation of children and of people suffering from a mental illness require special skills. Such clients will be encountered in many different areas of practice and dealing with them appropriately should form part of the competency standards.

The omission we identify is that of public law. This is arguably subsumed in paragraph 11 but we do not consider that the bundling together of all these different areas in one paragraph provides sufficient clarity. We suggest separate paragraphs on public law and on EU law, and then a paragraph on human rights and (another omission) discrimination and equalities law.

Question 3: Have we struck the right balance in the Statement of Legal Knowledge between the broad qualification consumers tell us they understand by the title solicitor and the degree of focus which comes in time with practice in a particular area

No.

See comments on question 5 below as to the areas covered by the statement.

The statement does not strike a balance. A balance will result from the degree of detail under each heading and the period for which knowledge should be retained. The statement of underpinning legal knowledge as drafted appears intended to function as a curriculum for a law degree/Legal Practice course. We should not expect, for example, solicitors who go on to develop a public law practice to retain detailed and up to date knowledge of wills and administration of estates. Similarly, with matters such as taxation. In the field of immigration, business immigration lawyers are likely to need greater knowledge of taxation than those practicing in asylum.

For most solicitors, issues such as Value Added Tax are more likely to be relevant to running their own practice than dealing with client's affairs. We do not consider it helpful to elide standards relevant to advising clients and those relevant to running a practice.

The profession of solicitor is increasingly differentiated. There are generalist practitioners although few if any would claim that they practice across all or even most areas of law. There are many others whose practice is very highly specialized indeed. We suggest that it is necessary to consider:

- What any solicitor is expected to cover in the academic phase of training
- What any solicitor is expected to experience during a training contract/the early months/years of practice
- What all solicitors are expected to have detailed knowledge of and be up to date with throughout their careers
- What all solicitors are expected to have some (to be defined) knowledge of throughout their careers and maintain that knowledge up to date
- What solicitors across broad practice areas are expected to have detailed knowledge of and be up to date with throughout their careers
- What solicitors across broad practice areas are expected to have some knowledge of throughout their careers and maintain that knowledge up to date
- What solicitors in specific practice areas are expected to have detailed knowledge of and be up to date with throughout their careers

Question 4: Do you think that the Threshold Standard articulates the standard at which you would expect a newly qualified solicitor to work?

See comments on question 5 below as to the areas covered by the statement.

Competent practice is a matter of being able to identify when a particular matter is beyond one's competence. That remains true throughout the career of any professional. Knowing when to ask for help is crucial. It is very helpful that this is spelt out under autonomy in the threshold standards at level 3 where the threshold standard is achieved.

The other aspect of the threshold for qualification is a sufficient range and complexity of matters being within one's competence. Level three is arguably less explicit about this because in a particular firm or organization the tasks being set an individual in the early months and years of practice could be at very different levels.

One query ILPA would like to raise is if a firm that is involved in training concludes that an individual has not met the competence standard could they end up in a dispute with an employee/former employee

for an assessment as to that competency by another body. If so who bears those costs of the setting up of such a body.

Will solicitors who have qualified under an earlier regime have to show that they meet the competence standard? If not when would their conduct be poor enough to warrant rebuke/reprimand?

ILPA also wonders about ensuring and maintaining competence. Has consideration been given to the fact that some will progress at different rates and some will deteriorate at different rates? Is the intention that all solicitors will aspire to level 5? Is this therefore an issue of guidance for firms and is the intention to tell firms what should be expected?

Question 5: Do you think that the Statement of Legal Knowledge reflects in broad terms the legal knowledge that all solicitors should be required to demonstrate they have prior to qualification?

No, not as presently drafted

As per our comments above, we consider that paragraph 11 of the statement should be unpacked and expanded, including under separate headings. In particular clients are entitled to expect that their solicitor have knowledge of more than “the key principles of anti-discrimination legislation”. Omissions from that paragraph are the principles of public international law. All lawyers should understand the status of international treaties in domestic legislation. The Solicitors’ Regulation Authority regulates solicitors in England and Wales. However, an understanding of devolution; of which matters are devolved and which not and the implications of this, is relevant to practice and could usefully be highlighted in paragraph 11.

Immigration status increasingly impinges on very many areas of civil life, besides immigration control’s being backed by a long list of crimes. We consider that a basic understanding of legal status in the country and of control before, on and after entry is now relevant to all practice and should form part of the curriculum for all students.

More broadly, solicitors may be called upon to advise on issues of civil status in many different contexts. Adoption, gender recognition, marriage, civil partnership, capacity, death can impinge on practice in many areas. Questions of private international law are also relevant here.

We are aware that there is frequently cross-over in our field with employment law and we do not consider that this is unique to immigration. Whether under other headings or standing alone, employment law should be mentioned.

Question 6: Do you think that the Competence Statement will be a useful tool to help entities and individuals comply with Principle 5 in the Handbook and ensure their continuing competence?

We are unable to comment at this stage without detail about how the tool will be used however one initial question is whether it is more than one element of the competence standard as incorporated into principle 5 of the handbook that would lead to sanction or an accumulation?

Question 7: Are you aware of any impacts, either positive or negative, which might flow from using the competence statement as a tool to assist entities and individuals with complying with Principle 5 in the Handbook and ensuring their continuing competence?

We are unable to comment at this stage without detail about how the tool will be used.