



ONGOING COMPETENCE RESPONSE TEMPLATE AND ACTION PLAN

January 2023

Purpose

The purpose of this document is to outline the steps CRL intends to take in accordance with the LSB's statement of policy on ongoing competence. It sets out; CRL's current approach to individual supervision, how far CRL has assessed that its regulatory arrangements meet the requirements of the policy, and further actions necessary to ensure compliance with the policy.

Overview

Chartered Legal Executives and CILEX Practitioners are specialist lawyers. They are trained, assessed, and authorised against one area of practice, thereby ensuring that the focus of the authorisation process is led by the knowledge, skills, and competencies necessary to be effective in their role, for the protection of the public.

To ensure that CRL is able to be confident in the standard of the specialist authorised persons it authorises, CRL admits individuals against the specialist competence frameworks that exist for each area of specialism. The frameworks set out the knowledge, skills and competences required for each area of specialism at the point of entry. There are additional knowledge, skills and competency requirements for those individuals who undertake advocacy.

CRL is confident that these frameworks are fit for purpose for use in assessing knowledge, skills, and competence for its specialist lawyers throughout their career. However, to ensure that this is the case, CRL has asked its external assessors to review the frameworks with this purpose in mind.

In relation to individual supervision requirements, CRL's existing process is based on reflective practice and CRL's oversight of the function is not a 'tick-box' exercise. All CRL's authorised persons are required to provide brief details of the activities undertaken during the CPD year and set out what they have learnt from their in-year training. CRL samples 2.5% of submissions selected at random from the regulated community database. Action can be taken against those individuals who have not met the requirements, although CRL works with the regulated community to bring them back into compliance, rather than using this as a first line intervention, as the focus of supervision is to maintain the competence of the individuals. As part of the enforcement review that is scheduled into CRL's activities in 2023, CRL will consider mechanisms to decide whether some complaints received would be better dealt with through additional supervisory activities rather than enforcement action.

CRL mandates one activity within the CPD requirements each year for its regulated community -'professionalism' (this includes, but is not limited to, conduct and ethics). The choice of CPD to comply with this area is the choice of the individual, however, they must be able to justify that choice and provide information in relation to learning and further development required. CRL checks that each CPD return includes this element and the sampling delves deeper into the activities undertaken to meet this requirement. CRL is working with CILEX to develop appropriate CPD training to meet conduct and ethics requirements beyond working in a law firm.



CRL operates a limited form of reaccreditation for its CILEX Advocates (these are Chartered Legal Executives who hold advocacy rights (but not litigation rights) and who must be employed within a regulated firm to exercise these rights). For reaccreditation purposes, these individuals must, as part of the CPD requirements, demonstrate at least 2 activities focused on their advocacy skills. CRL will be considering, during 2023, the introduction of reaccreditation over a 5 year period for all its authorised persons to signal to consumers and the public the competence of its regulated community.

Having reviewed CRL's current supervision activity against the LSB's statement of policy, an action plan has been developed to enhance its current arrangements (set out later in this document).

The activities fall broadly into the following categories:

Key areas for development:

- Data

Risk matrices

CRL has just completed its work on the development of risk matrices. This has enabled CRL to create a risk score for each CILEX member regulated. The score is created using data collected at each renewal cycle from its regulated community. The data includes matters such as:

- Where the individual works (e.g., regulated firm, in-house etc.)
- How they are supervised
- The area of law in which they practice
- What type of client they work with (if at all)
- Prior conduct record

The data is then fed into an algorithm to create a score for each regulated individual. This has enabled CRL to have a better understanding of the risks posed by its regulated community and, therefore, start to understand where the work in relation to ongoing competence should be targeted. CRL has control of the algorithm and will be able to amend it as intelligence develops both from use of the matrices and other activities.

CRL also intends to use this data as part of its enforcement activities.

Sampling

CRL undertakes an annual sampling activity to ensure that its regulated community is meeting the scheme requirements. CRL will analyse the data held to identify actions taken by authorised persons by area of specialism to help to inform the development of toolkits for ongoing competence.

Intelligence from the enforcement team

Last year CRL restructured to ensure that the operations' teams can provide intelligence between authorisation, supervision, and enforcement. This will enable increased learning to be drawn from the experiences of the enforcement team. Over time, the data and intelligence will be able to feed into improvements for ongoing competence.



Data from First Tier Complaints

CRL plans to run an analysis of first-tier complaints data collected from its regulated community in 2023 and this data will be fed into the intelligence CRL holds to assist with assessing ongoing competence.

Other sources of data

CRL has planned to work with third-parties (identified in the action plan below) during 2023 to identify what other sources of data will be available to enrich the information CRL holds on the ongoing competence of its regulated community and feed this into its overarching assessment.

- Improving resources available to the regulated community

Resource information by area of practice

CRL intends to collate the information gathered through its supervision activities to build resource pages or ‘toolkits’ to assist its regulated community on meeting the requirements.

Ensuring access to appropriate CPD to maintain and enhance competence

Conduct and ethics form part of the frameworks for CRL’s specialist lawyers and the focus on this area was enhanced with the introduction of its new education standards in 2021. CRL is, however, working with CILEX Education to ensure there is appropriate learning available to cover conduct and ethics focused specifically on in-house working.

1. Which expectations and outcomes the regulator already meets

See gap analysis on pages 3-13

2. The work done and progress made to date in meeting the expectations and outcomes

See gap analysis on pages 3-13

3. Planned work between February 2023 and January 2024 to meet the expectations and outcomes, including milestones and timeframes

See implementation plan on pages 14-16

4. Whether you consider you will have met all the outcomes and expectations by 31 January 2024, and if not all of them, what further work will be needed and is planned from 2024 onwards

It should be noted that the plan to implement the changes (which includes consultation and pilot of the new approach) has tight timeframes and any slippage may cause delay to the changes.

However, as currently planned, the framework should be implemented by January 2024. This will introduce a rolling programme of reaccreditation, based on the risk profile of CRL’s authorised persons.

**CILEx REGULATION GAP ANALYSIS
LSB ONGOING COMPETENCE POLICY STATEMENT (SoP)**

No. LSB SoP	<u>LSB statement of policy: ongoing competence</u>
12	<p>Regulators must pursue the following outcomes:</p> <ul style="list-style-type: none"> a. Set the standards of competence that authorised persons should meet at the point of authorisation and throughout their careers. b. Regularly determine the levels of competence within the profession(s) they regulate and identify areas where competence may need to be improved. c. Make appropriate interventions to ensure standards of competence are maintained across the profession(s) they regulate. d. Take suitable remedial action when standards of competence are not met by individual authorised persons.

No. LSB SoP				
20	<p>SETTING THE STANDARDS OF COMPETENCE In pursuing outcome 12(a), regulators must develop a competence framework or equivalent that clearly states what skills, knowledge, attributes and behaviours ('competencies') they expect authorised persons to have at the point of authorisation and throughout their careers.</p>			
	Requirement	CRL Current Status	Gap identified and proposed closure	Timeframe
21A	Core competencies that authorised persons should have, such as knowledge of basic legal principles, client care and practice management.	CRL has a competence framework for each specialist area of practice and a general statement for those who work in non-specified unreserved areas. These are tested at the point of entry by qualified assessors who meet regularly to discuss standardisation points and CRL has a bank of evidence against which it assures that the standards are maintained.	It is possible that competences may change and develop post authorisation. Review the current framework and develop to cover PQE. ACTION: CRL will work with its external advisers and assessors to consider whether the competence framework provides sufficient flexibility to ensure competence post-qualification and introduce any additional requirements.	Q1 2023
21B	Competencies around ethics, professional conduct and standards that ensure public confidence in the legal professions.	CRL's competence framework covers these areas. Conduct and professional ethics are core requirements at all stages of	CRL has already started to work with with CILEX to develop their CPD offer to ensure that the Ethics and professionalism CPD extends	

		<p>the technical knowledge requirements and in the competency framework</p> <p>CRL has also mandated an outcomes-focused ‘professionalism’ element for all CILEX members required to undertake CPD. This element is included within the logging requirements for CPD at CRL and the system requires the individual to log what they have learnt from that training.</p> <p>CRL’s logging requirements are not ‘tick box’</p>	<p>beyond working within a law firm to include in-house CILEX members.</p> <p>ACTION: CRL to continue to work with CILEX on the CPD offered in relation to professional conduct and ethics.</p>	Q1 2023
21C	Specialist competencies that particular authorised persons should have, for example, in their role as advocates.	<p>CRL has these competency frameworks for the following areas of practice:</p> <ul style="list-style-type: none"> • Civil litigation • Criminal litigation • Family litigation • Immigration • Probate • Conveyancing • Business • Employment • Advocacy skills (for each area of litigation) 	<p>CRL is also working on an application to be submitted in 2023 which will cover the possibility for suitably qualified and competent advocates to appear in the superior courts (Higher Rights of Audience)</p>	

		<ul style="list-style-type: none"> Associate Prosecutors (criminal litigation and advocacy for lay employees of the CPS) <p>For advocates there are specific additional renewal requirements for individuals to demonstrate in order to renew their practising certificate</p>		
21D	Recognition that competence varies according to circumstances, and authorised persons may need competencies depending on factors such as: job role; area of practice; stage of career; changes to the law; changes to consumer expectations.	<p>CRL recognises that different groups require different competencies based on the factors mentioned in the policy and has developed risk matrices which identify these factors and rate each regulated individual to enable better targeting of resources to those individuals who flag as higher risk for supervision.</p> <p>CRL is currently analysing the data outputs from the algorithm to rate individuals according to the information we hold</p>	See below for actions which will be taken using the data collected.	

22 & 23	<p>DETERMINING THE LEVEL OF COMPETENCE IN THE PROFESSIONS</p> <p>In pursuing outcome 12(b), regulators must put in place measures to routinely collect relevant information about the competence of their authorised persons. This should contribute to their determination of levels of competence across the profession(s) they regulate, and their understanding of areas of risk or where competence may need to be improved.</p> <p>Regulators must determine appropriate arrangements for collecting relevant information.</p>			
	Requirement	CRL Current Status	Gap identified and proposed closure	Timeframe
24	In determining what is relevant information, regulators should consider:			
24A	Information from their regulatory activities, for example, regulatory returns, first-tier complaints and thematic reviews.	<p>CRL requires CILEX members to record their CPD activities and what they have learned from that activity – CRL does not operate a ‘tick-box’ declaration process for CPD.</p> <p>CRL also samples CPD records each year. This is currently a random sample; however, CRL has the power to include those that pose a higher risk to the consumer as part of the sample.</p> <p>CRL collects 1st tier complaints data</p> <p>CRL has been involved in the joint outcomes from thematic reviews in relation to the Coroners’ Court and</p>	<p>ACTIONS:</p> <ul style="list-style-type: none"> - Consider how CRL can use the risk data to identify a larger CPD sample - Review data held in relation to first tier complaints and identify how this can be incorporated into the risk assessment - Work collaboratively with other frontline regulators in the sector to develop thematic reviews by area of specialism. These could be identified from 	<p>Q1 2023</p> <p>Q1 2023</p> <p>Ongoing</p>

		previously was involved in the QASA project.	outcomes of analysis of risk data	
24B	Information from supervisory activities such as spot checks, audits, file reviews or equivalent oversight checks.	CRL currently samples CPD data against known information for CILEX members. However, this data is self-reported.	ACTION: CRL to consider how it would be able to access data from individuals who work in firms regulated by other frontline regulators and for those individuals working in either unregulated settings or in-house.	Q2 2023
24C	Feedback from, including but not limited to, consumers/users, intermediaries, supervisors, peers and judiciary.	At the point of first authorisation (and first renewal for advocates) CRL requires supervisor endorsement of competence. Advocates/litigators are required to provide judicial references Applicants for non-contentious practice rights are also required to provide references from authorised persons Feedback also comes from complaints data we hold; however, CRL does not get a high volume of complaints either from members of the public or LeO.	ACTION: CRL will consider other 3 rd party data that can be utilised to support CRL's consideration of ongoing competence, including requests for appraisal records and references at renewal.	Q2 2023
24D	Information from other agencies such as the Legal Ombudsman, disciplinary tribunals and government agencies that have relevant data.	CRL currently receives data from: <ul style="list-style-type: none"> - Leo (although limited data on CRL regulated individuals), - other ARs and detail on enforcement action forms part of risk matrices. 	ACTION: Create a coherent data strategy to support assessment.	Q2 2023

		- Dialogues with HMRC, CPS and Land Registry – possible use of data from the Lawyer Assurance initiative		
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25	MAKING INTERVENTIONS TO ENSURE STANDARDS OF COMPETENCE ARE MAINTAINED In pursuing outcome 12(c), and taking into account evidence gathered in pursuing outcome 12(b), regulators must put in place effective measures to ensure standards of competence are maintained across the profession(s) they regulate.			
26	In doing so, regulators should consider a range of measures, such as:			
	Requirement	CRL Current Status	Gap identified and proposed closure	Timeframe
26A	Effective communication and engagement with the profession(s) they regulate to draw attention to key risks and areas where competence may need to be improved.	-	ACTION: It is CRL’s intention to create landing pages by specialism to provide resources, communications and engagement similar to the resources provided for the coroners’ courts. This will provide a communications hub to update on areas of interest to specialisms. These will be developed over time, starting with areas identified as highest risk through the risk matrices and implemented over the reaccreditation implementation period.	Q3 2023

26B	The promotion of reflective practice and use of feedback, including in pre-authorisation education and training, to identify learning and development needs.	The CRL CPD scheme already requires reflective practice R-P-A-E Members required to do CPD pre-authorisation (from CILEX Paralegal onwards) and this introduces CILEX members to reflective practice, as do the education and training requirements		
26C	Specifying training, learning and development requirements (including mandatory requirements).	CRL already has some specified CPD (for advocates) Professionalism including ethics is mandated for all those required to undertake CPD	ACTION: CRL will develop these alongside the proposals to create landing pages by specialism	Q3 2023
26D	Competence assessments, for example, observation or examinations.	Specialisation requires competence and knowledge assessments in area of practice on entry For advocacy re-accreditation is required for all advocates at first renewal and then every three years for those without litigation rights Proposal for Higher Rights will create an additional entry point based on experience and competence Additional practice rights are assessed for authorisation (i.e., specialist not generalist certificate)	CRL will use the other tools available to it to assess competence of the regulated community and will consider in cases which fall below the required competency standard the requirement to be reassessed (using the ULaw assessment recently introduced to allow experienced Fellows to be authorised for practice rights) prior to reissue of a certificate.	Q4 2023

26E	Reaccreditation models (i.e. requiring periodic proof of competence to maintain a practising certificate).	CRL currently reaccredits all advocates at first renewal and requires those advocates without litigation rights to reaccredit once every three years.	<p>ACTION: CRL will review models operating in other sectors and in the legal profession internationally. It will then consult the regulated community on proposals.</p> <p>CRL's intention would be to start with those individuals assessed as higher risk as identified through the operation of the risk matrices.</p>	Q2 2023
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27	TAKING REMEDIAL ACTION IN RESPONSE TO COMPETENCE ISSUES In pursuing outcome 12(d), regulators must develop an approach that provides for appropriate remedial action to be taken to address competence issues. Remedial action in this context means measures intended to support authorised persons to improve or correct competence issues.			
28	In doing so, regulators should consider:			
	Requirement	CRL Current Status	Gap identified and proposed closure	Timeframe
28A	What the most appropriate measures are; for example, requiring a period of supervised practice, or requiring specific training to be completed satisfactorily.	<p>Conditions can be placed on the practicing certificate</p> <p>Certificates can be revoked/lapsed if authorised persons do not meet the requirements at renewal</p>	<p>ACTION: CRL will, as part of its planned enforcement rules review reconsider the imposition of these conditions and determine if more/better use could be made of them.</p> <p>Amend CRL’s current enforcement rules allow for CPD to be mandated by the panels</p>	Q4 2023
28B	What evidence they will rely on to verify the competence issue.	All the previous information plus complaints and other reports of poor practice are currently used.	<p>ACTION: Part of the purpose of CRL’s restructure in 2022 was to introduce a learning loop across authorisation, supervision, and enforcement. Learning in relation to enforcement action arising from lack of competence can be fed back into</p>	Q1 2023

			<p>authorisation and supervision to improve these regulatory tools and so drive-up competence.</p> <p>Third party feedback including references, appraisals, peer judgements and consumer feedback. There is also the possibility to use review data from third party suppliers</p>	Q3 2023
28C	What factors they will use to determine that remedial action is suitable to address the competence issue, including reference to any aggravating or mitigating factors.	Currently considered on a case-by-case basis (e.g., how are they supervised, do they supervised others, do they work in a regulated firm, do they handle client money etc.)	ACTION: Create improved guidance for panels dealing with these matters, similar to that provided in relation to the decision regarding remote hearings	Q4 2023
28D	What factors they will use to determine the most appropriate remedial action.	See above	See above	
28E	How they will follow up the competence issue to prevent recurrence.	CRL has the power to select its CPD sample on the basis of risk as well as randomly selected records. Follow up will be through this approach. In other cases, the use of conditions on the practising certificate can be followed up.		

CRL IMPLEMENTATION PLAN: 2023

Completion date	Objective	Measure	Action	Resources	Responsible manager
Q1 2023	Ensure current competency frameworks are fit for purpose for post-qualified CLEs	All frameworks have been reviewed and any proposed amendments have been identified for consultation	Commission CRL’s external advisers to undertake the review Identify any areas for change requiring consultation	PAS Manager and External Advisers	COO
	Ensure there is suitable CPD provision to meet the professionalism requirement	Revised CPD module on ethics and professionalism available from CILEX Education	Liaise with CILEX Education team to optimise module content and ensure coverage of in-house work	PAS Manager CILEX Education team	COO
	Review data from CPD sampling and implementation of risk matrices and identify areas/individuals of highest risk, and Review data from implementation of first tier complaints	Data analysed and high-risk areas/individuals identified	Data extraction, analysis, and review	PAS Manager Data Analyst Senior Policy Officer	COO
	Build learning loops across operations directorate	Ensure intelligence from enforcement team is discussed with authorisation and supervision teams on a regular basis	Add intelligence discussion to operations directorate meetings	Director of Operations	COO

Q2 2023	Identification of additional internal and external sources of data, including securing access to that data	Coherent data strategy developed to ensure comprehensive understanding of regulated community	Develop data strategy	Director of Operations All Operations Managers	COO
	Review models of ongoing competence in operation in other sectors to inform CRL's model development	Comprehensive understanding of options and tools to ensure ongoing competence of regulated community	Develop proposals for development of model for ongoing competence Identify proposals for consultation	Director of Operations All Operations Managers	COO
	Communication with third parties who hold data that could be used to provide additional intelligence to CRL's dataset	Meetings scheduled and proposals for MoU's/ data sharing agreements	Steps to enable access to data held by third parties	COO Director of Operations Director of Policy, Governance and Legal	COO
Q3 2023	Launch consultation on revisions to CPD scheme to move towards ongoing competence assessment	Consultation live for 12 weeks	Launch and close consultation	COO Director of Operations PAS Manager	COO
	Develop and implement pilot scheme using volunteers from pool identified as higher risk	Pilot launched	Identify volunteers and launch pilot scheme	COO Director of Operations PAS Manager	COO
	Create landing pages for pilot group	Landing pages developed and live on the website	Develop toolkits for areas of practice covered within the pilot and build resources	Director of Operations PAS Manager	COO
	Issue communications and engagement with pilot group in relation to availability of tools	Feedback from pilot group on helpfulness of tools	Feedback forms issued as part of pilot Feedback analysed	Director of Operations PAS Manager	COO

Q4 2023	Develop and submit rule change application based on evidence and feedback	Application submitted to LSB	Draft application for submission to LSB	COO Director of Operations PAS Manager	COO
	Develop guidance for enforcement panels on use of other tools available	Guidance ready for implementation subject to rule approval	Guidance published	Director of Operations Enforcement Managers	COO
Q3 2024	1400 practitioners reaccredited for 5 years				
Q3 2025	1400 practitioners reaccredited for 5 years				
Q3 2026	1400 practitioners reaccredited for 5 years				
Q3 2027	1400 practitioners reaccredited for 5 years				
Q3 2028	1400 practitioners reaccredited for 5 years	All practitioners have been through 1 cycle of reaccreditation	Evaluation of approach and changes to the rules and guidance as necessary	Director of Operations PAS Manager	COO