A Competency Framework for Solicitors in Ireland

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March 2023

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Acknowledgments

Preface

I am very honoured to endorse the excellent work of the Law Society of Ireland Competency Research Group in developing this proposed Competency Framework for Irish solicitors.

This important work has international dimensions, as competency frameworks in legal education and other professions are developed worldwide. It is not only Ireland that has been developing a Competency Framework. The content of this proposed Competency Framework has therefore been derived from global best practices in professional education, competency formation and frameworks, and from recent Law Society of Ireland research on legal education and the professions.

The proposed Competency Framework provides both a statement of the competence that would be expected on day one of legal practice, and an advisory framework for ongoing continued competence for Irish solicitors throughout their careers. The Framework is practical and visionary, designed for today's rapidly changing environment and intended to be adaptable in the future.

I heartily commend the proposed Competency Framework for Irish solicitors to you.

Professor Alan Treleaven
Co-Chair, July 6, 2022

Part 1

Introduction and Process Report

Introduction

This first section of the Competence Framework describes the process of the project and the development of its three main outcomes, namely the Competency Framework itself (CF), an accompanying Guide to be used in its implementation, and the Comparative Literature Review that informed the development of the CF.

Background to the project

The Practice Management Standard Working Group was established by the President of the Law Society in 2015 to develop a practice management standard for solicitors in Ireland. There are four requirements that make up the Practice Management standard, and Requirement 4 relates to Human Resources, Competence & Knowledge Management.

Two of the criteria within Requirement 4 provides for a legal practice to:

a) demonstrate policies and strategic planning in relation to staff resource planning, competency requirements and recruitment,
b) have a knowledge development policy and a professional development plan to include mentoring and CPD and knowledge resource management.

As the Working Group was unable to identify a credible, relevant and reliable competency framework for solicitors suitable for this purpose, the Working Group referred the development of the competency framework to the Law Society Finuas Skillnet (LSFS) Steering Committee as it was not within the Working Group's remit to develop resource references or deal with new training challenges.

The Steering Committee agreed that mapping a competency framework unique to Irish solicitors would be new but in line with emerging best practice across every sector of industry. It felt that a competency framework was increasingly essential to inform talent pipeline management systems and for upskilling pathways to be strategically developed and CPD development policies to be engrained into corporate structures for the benefit of employees, firms and sectors.

It was therefore decided that external experts (the Research Group) would be appointed to carry out this project.

Initial objectives

The proposed output of this project when it began in January 2020 was a confidential report and recommendations on a new competence framework for solicitors in Ireland, including a brief literature review of professional competency frameworks in at least 3 jurisdictions including law and another profession.

It was proposed that the project would provide the LSFS with an evaluation of the current framework of solicitor competence, and recommendations for its evolution and improvement in order to form a new framework of professional competence. The project would take into account a range of current and future issues facing solicitor practice and education in Ireland. These would include: changes to legal practice, economic and regulatory[1] pressures, evolution of recruitment

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[1] In particular the Legal Services Regulation Act 2015.

practices, development of the training contract, the role and nature of CPD, and the impact of the EU and Brexit.

Initial methodology

The methodology proposed in January 2020 consisted of five phases:

Phase 1 –Literature review

The literature review and comparative analysis would be a 'live' and ongoing document during the process of review, until the final draft of the report is produced. The review would comprise:

a. A review of the literature on methods of developing competence statements within the legal and medical professions. The review would explore best methods in terms of rigour, validity and outcomes.
b. Setting out an understanding of the larger context in Ireland *ie* in relation to profession, economy, regulation, pervasively throughout the review.
c. A review of the literature on competence statements in three common law jurisdictions (namely England & Wales, Australia, Canada), focusing on the outcomes, and briefly comparing the history and use across jurisdictions. The development of competency frameworks would be the focus. The relevant literature in the medical professions would also be reviewed.

Phase 2 - Stakeholder consultation

This would comprise focus groups over a range of practices across Ireland, including in-house practice.

Data arising from the focus groups would be transcribed and analysed by the Investigators. Where possible, focus groups would be audio-recorded and where necessary transcribed. Summaries would be made for the purpose of analysis. The LSFS will make a general request to its members and with the LSFS we shall choose interviewees according to the sample we want from particular demographics. Brief reports of the interviews will be produced by the Co-Investigator. The focus groups would be led by the Project Manager and Head of LSFS, with oversight of the whole process by the Co-Chair.

Phase 3 - Validation survey

Validation survey based on Phase 2 results administered online to a further sample of stakeholders within the solicitor profession to evaluate the initial competence framework. We would work with the LSFS to ensure appropriate sample groups and sizes.

Phase 4 - Expert Virtual Delphi Panel

Finally, an expert virtual panel chosen by the Project Team would review all available evidence from phases 2 and 3, to confirm the competence framework and identify core themes arising from the results.

Phase 5 – Submission of Project Report

This would include the literature review, the evaluation of consultation data, and a Competency Framework.

Evolving objectives

The project's objectives evolved during 2020 partly due to the Literature Review which raised a number of strategic questions, and partly due to the LSRA's report (published in November 2020) on legal practitioner education and training[2] which set out their proposals for the definition of competence and standards for solicitors and barristers. Consequently it became important to determine whether this project should be aligned with the review of the PPC and a statement of day

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[2] www.lsra.ie/wp-content/uploads/2020/11/Section-34-ET-Final-Report-to-Minister.pdf

one competence (as recommended by the LSRA), or whether it should proceed as a standalone project.

This question was put to the Law Society's Education Committee in March 2021, and as a consequence a revised objective and methodology was agreed. We also revised the project methods and timeline to account for the effects of the Covid-19 pandemic.

Revised methodology

Phase 1 (Literature Review)
Remained unchanged.

Phase 2 (Stakeholder engagement)
This was curtailed due to the Covid-19 lockdown after four workshops. The Bar Association workshops that had taken place prior to lockdown were with Carrick-on-Shannon, Donegal, Kilkenny and Limerick. These sessions were led by the Head of LSFS and well-received by participants. The discussions were transcribed by Law Society staff and provided to the Investigators.

Phase 3 (Validation survey)
This was cancelled due to the profession needing to focus on their core business interests during the pandemic. The decision to cancel was influenced by the low response received to the PPC consultation which elicited only 12 responses from over 200 training law firms. Additionally, there were concerns that a survey might only successfully engage with the larger Dublin-based firms with the resources to respond to consultations, which would mean the responses would not be reflective of the whole profession. In general it was felt that the number of responses indicated survey fatigue at a time when, due to the effects of the Covid-19 pandemic, the profession's focus was necessarily elsewhere.

As an alternative, a special meeting of the Education Committee was called in March 2021 to consider the draft Competency Framework and surrounding documentation. In addition, it was determined that the best way to engage a wide range of stakeholders was to run three roundtable events in May/June 2021. In order to gain varied stakeholder input, each Law Society committee was invited to nominate two people to attend a focus group. In addition a number of external stakeholder groups and law firms were invited and attended representing a broad spectrum of the legal sector including in-house and consumer groups.

Phase 4 (Expert virtual Delphi panel)
This oversight device, again affected by the pandemic, was developed into the appointment of a distinguished international observer. Professor Alan Treleaven agreed to take on the role as Co-Chair and the increased prominence given to that role in providing external observations, oversight, comment, guidance and analysis has been invaluable to the research team. His summary view of the project is contained in the Preface to this document.

Phase 5 (Project report)
Remained unchanged.

Observations on process

Our approach is tailored specifically to the situation of solicitors in Ireland. It is not possible to do otherwise: recent economic and cultural history, and recent contemporary events (notably the Global Financial Crisis, Brexit, and the Covid-19 pandemic) have helped to shape the legal profession and could not be ignored in our work. We implemented as far as possible the feedback given to us at the various stages in the project on the drafts of the CF we produced.

Once we had passed the final round of feedback, we returned to the Thematic Summary to review our drafting processes and content before writing the final draft of the CF. We summarised the feedback in tabular form (Appendices 1 and 2); and of course worked off that as well to produce the final draft. What was interesting to observe was the extent to which feedback from responders generally tallied with previous empirical research findings that were summarised in the Thematic Literature Review. Throughout, all processes, findings and documents were reviewed by the steering group (Attracta O'Ryan, Rachael Hession) as well as the project's international reviewer, Professor Alan Treleaven, Victoria University Law School and previously Director of Legal Education, British Columbia.

In Appendices 1 and 2 below, we give a detailed breakdown of process and evidence from the various consultation processes.

Part 2

The Competency Framework:
A regulatory framework for day one competence and advisory framework for continuing competence

Introduction

This document sets out a Competency Framework (CF) for day one competence in the practice of solicitors in Ireland. It also provides an advisory framework for continuing competence. Recognising the diverse and changing nature of the profession, the document focuses upon the threshold competences that might be expected of solicitors now and in the near future. A document such as a Competency Framework will always be evolving. As described in the Guide that has been produced for implementation, we envisage that the Competency Framework will be regularly reviewed and updated to align it with changes occurring in the legal professions and in society in Ireland.

The CF begins with a threshold definition of Professionalism which establishes a holistic baseline level of competence that should be achieved by all solicitors at the point of qualification. The definition sets out expectations that clients and other stakeholders can reasonably assume of all Irish solicitors wherever they practice. It informs the articulation of the more granular competencies in Professional Ethics and Standards, in Professional Communications, and in Understanding of the Law and its Practical Application, which also forms an essential part of the CF. The CF can be developed for many different types of educational interventions, and for formative and summative assessment in both pre-qualification training, and CPD programmes – this is further developed in Part 3.

Professionalism – the threshold definition

1. Solicitors who meet the threshold will evidence that they are committed to the rule of law and administration of justice, and the interests of justice and democracy, both in Ireland and in the EU context.
2. As newly qualified solicitors they will correctly apply the most commonly-used principles of good conduct, identify the limits to their knowledge and experience and escalate appropriately.
3. They will have an accurate knowledge of the foundational concepts of legal knowledge and skills and will rarely make errors in their delivery of straightforward matters.
4. At the point of qualification, they should be able to deliver effective and competent legal services at a level which is unlikely to cause regulatory concerns for their employer or regulator.
5. They will understand their personal responsibility to maintain and develop their knowledge and skills throughout their career through continuing professional education and personal development that is relevant to their chosen area of practice.
6. They will demonstrate an understanding of diversity, including an understanding of the special duty of care owed to vulnerable clients, an understanding of the requirements owed to clients who potentially lack mental capacity, and an understanding of cultural issues generally, including respecting the needs and cultural wishes of others and being proactive in addressing the needs of people from all backgrounds.
7. A solicitor who meets the threshold will conduct themselves (both orally and in writing) in a manner which instils confidence in their work and advice. At all times they will act with honesty and integrity and with respect for colleagues, clients, third parties and the courts.

Core and mandatory competencies

1. Professional Ethics and Standards

1.1. Regulatory framework and professional rules and principles of good conduct

At the point of admission, a solicitor should meet the requirements of the Law Society Guide to Professional Conduct and the CCBE Code of Conduct and in particular be able to:

- Understand the role of the Legal Services Regulatory Authority, the Law Society of Ireland, and other relevant regulatory bodies in relation to the legal and other professions.
- Demonstrate knowledge of appropriate standards of compliance with the professional standards required of a solicitor, including solicitors accounts, regulations and AML obligations.
- Understand the concept of independence as it applies to the legal profession

1.2 Duties owed to the client, court and profession

At the point of admission, a solicitor should meet the requirements of the Law Society Guide to Professional Conduct and the CCBE Code of Conduct, and in particular be able to:

- Identify the client and the individual circumstances of a client's case
- Act in the best interests of clients
- Take instructions and carry them out
- Identify and plan to achieve client goals and objectives
- Understand and adhere to the professional obligations of a solicitor to the Court
- Understand and adhere to the professional obligations of a solicitor to other members of the profession

1.3 Conflicts of interest

At the point of admission, a solicitor should meet the requirements of the Law Society Guide to Professional Conduct and the CCBE Code of Conduct, and in particular be able to:

- Understand the professional obligations of a solicitor to avoid conflicts of interest
- Identify instances of conflicts of interest
- Prevent a potential conflict from arising
- Resolve a conflict of interest

1.4 Confidentiality

At the point of admission, a solicitor should meet the requirements of the Law Society Guide to Professional Conduct and the CCBE Code of Conduct, and in particular be able to:

- Understand the professional obligations of client confidentiality, including data management and cyber security
- Determine an appropriate course of action where conflict between a solicitor's duty of confidentiality and other professional duties is identified

1.5 Professional development

At the point of admission a solicitor should be able to:

- Critically reflect on, appraise and analyse their own developing practice in relation to the knowledge, skills and aptitudes necessary for professional legal practice.
- Understand the value of continuous professional development for the benefit of their own professional practice, their clients and the reputation of the legal profession
- Recognise the importance of good self-management and take responsibility for one's own actions or inactions, remaining at all times aware of own limitations.
- Understand the practical business of running a legal function (both from perspective of private practice and in-house) including an understanding of risk and financial requirements, costs and billing

2. Professional Communications

2.1 Professional relationships.
At the point of admission, a solicitor should be able to:

- Build strong and constructive relations with external parties involved in a matter
- Work with respect and empathy at all times, remaining alert and responsive to the needs of individuals, particularly those who may require adjustments to usual practice
- Work effectively, collaboratively and efficiently as a team-member
- Use language which is appropriate to a legal matter
- Provide timely and effective communications
- Handle stressful situations in a constructive manner

2.2 Interviewing
At the point of admission, a solicitor should be able to:

- Introduce and conclude an interview effectively and use appropriate questioning techniques throughout, including identifying any gaps in known information
- Conduct a client-centred interview making the client feel confident and comfortable, and listening carefully and respectfully to the client
- Advise the client, if possible and appropriate in the circumstances
- Deal with appropriate professional and ethical issues during interview
- Record the interview accurately

2.3 Negotiation
At the point of admission, a solicitor should be able to:

- Understand different approaches to legal negotiation and their practical and ethical conventions
- Select appropriate strategies to plan and conduct a negotiation
- Communicate effectively with a client and others throughout a negotiation

2.4 Writing and drafting
At the point of admission, a solicitor should be able to:

- Write well-organised and factually accurate documents that achieve their intended purpose, and make appropriate reference to other related documentation
- Draft documents with a high command of language, that are structured according to convention and audience requirements and with sufficient attention to detail
- Demonstrate use of a precedent bank of styles to progress a transaction

2.5   Legal research

At the point of admission, a solicitor should be able to:

- Gather information relevant to a matter
- Analyse and prioritise factual issues to be dealt with
- Apply legal analysis to fact patterns
- Use appropriate sources of legal research
- Update legal information
- Interpret statutory rules pertaining to the matter in hand
- Provide clear and relevant advice to clients, and to other professionals

2.6   Digital Competency

At the point of admission, a solicitor should be able to:

- Communicate using digital technologies that best meet the needs of the situation and the individuals involved, mindful that some technologies may not be accessible to everyone
- Demonstrate a commitment to understanding developments in the use of current and future technologies both in Ireland and globally; and how this could enhance all aspects of client service and business efficiency (communication, organisation, collaboration, learning and development).
- Understand the risks of digital communications, and how to assess those risks in the context of relevant regulatory frameworks
- Be aware of critical digital literacy, in which the digital applications in use in the professions are understood in their functions and their effects on legal stakeholders

2.7   Advocacy

At the point of admission, a solicitor should be able to:

- Plan a coherent and persuasive submission that combines substantive legal knowledge and advocacy skills
- Present a submission using legal authorities and relevant facts within a cogent structure
- Use documentation in preparation for, and during, a submission
- Use effective speaking skills
- Demonstrate an understanding of the ethics and conventions of advocacy in courts and tribunals

2.8   Psychology of a lawyer

- Demonstrate a critical awareness of key psychological characteristics of a lawyer including professional identity formation.
- Critically reflect on matters relating to the psychology of a law firm, including aspects of dignity at work, empathy and compassion for clients and colleagues and building a healthy culture at work.
- Demonstrate a critical awareness of the psychology of leadership including styles of leadership and the importance of resilience.

- Evaluate and judge the issues relating to mental health & wellbeing in the workplace and the importance of 'belonging'

2.9 Legal Practice Irish

- Meet and greet clients in Irish.
- Identify Irish legal terminology.
- Refer a client to a solicitor who executes his/her legal practice skills through the Irish language.

3. Understanding of the law and its practical application

3.1 Threshold academic understanding of core areas of law

At the point of admission, a solicitor will have provided sufficient evidence of their academic understanding of the following areas of law:

- *Company law:* to encompass a sound knowledge and understanding of the concepts, principles and rules of Company Law in Ireland.
- *Constitutional law:* including knowledge and, crucially, understanding of the constitutional case law of the Irish courts and to demonstrate the ability to critically analyse, discuss and apply the principles of Irish Constitutional Law.
- *Law of contract:* including a comprehensive understanding of the underlying statutory foundation and an ability to demonstrate familiarity with appropriate case law.
- *Criminal law:* to encompass an understanding of the core principles of criminal law and criminal procedure and a familiarity with all current relevant statutes, Irish case law, and Law Reform Commission recommendations.
- *European Union law:* to encompass a knowledge and understanding of the relevant provisions of the Treaty on European Union ("TEU") and the Treaty on the Functioning of the European Union ("TFEU") and legislation and caselaw of the Community judicature.
- *Equity:* to consist of a thorough knowledge and understanding of the modern principles of Equity and Trusts including an understanding of the historical development of Equity which are necessary to understand the modern law.
- *Real Property:* to comprise a sound knowledge and understanding of the body of property law including the changes introduced by the Land and Conveyancing Law Reform Acts 2009-2019..
- *Law of Tort:* to encompass a sound knowledge and understanding of the principles of Tort to include the underlying statutory foundations, where such statutory foundations exist, and also a familiarity with appropriate case law.

3.2 Application of law to core professional areas of practice

At the point of admission, a solicitor should be able to demonstrate an understanding of legal processes and sources (and the relative importance of different types) of law, including ADR and administrative/regulatory agencies.

At the point of admission, a solicitor should be able to demonstrate the following understandings with regards to the following core areas of practice:

Business Law

- Understand the core principles of company law and corporate governance including demonstrating a critical awareness of the process for company formation, the practice of company secretarial management and the rules relating to share capital and capital maintenance.
- Analyse the methods of financing a business and evaluate and judge the laws and procedures relating to transactions involving directors; the buying and selling of a business; and financial assistance and other restricted activities.
- Demonstrate a critical awareness of corporate restructuring and insolvency including the process for receivership and examinership.
- Understand the core principles of business regulation and analyse how to identify if a business is regulated and typical legal implications of regulation.
- Provide clear and relevant advice to clients and to other professionals with regard to competition law matters and consumer protection issues.
- Evaluate and judge types of commercial contracts and demonstrate a critical awareness of the formalities for digital contracts and eSignatures.
- Provide clear and relevant advice to clients with regard to IP rights and software licensing matters.
- Draft commercial contracts with a high command of language and accuracy.

Dispute Resolution[3]

- Take proper instructions from clients.
- Advise clients & brief counsel.
- Handle interlocutory applications.
- Run or settle an action as appropriate.
- Enforce any orders obtained.
- Recover the appropriate costs from client(s) and/or the other parties involved in the litigation.
- Enhance knowledge and understanding of the substantive law including recent developments.
- Increase understanding of the relationship between substantive Law and Procedure and Practice, and how this impacts the client.
- Develop an ability to apply knowledge of the substantive law and Procedure and Practice.
- Understand the core principles of mediation, including the applicable statutory framework.
- Demonstrate a critical awareness of the arbitration process.
- Critically reflect on settlement strategy and forming and implementing an effective strategy.

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[3] Note that the phrase is used in the widest sense. For more advanced and specialised sense of alternative methods of dispute resolution beyond the courtroom, see 'Advanced Dispute Resolution' and 'Mediation' at 3.3, below.

- Understand the core principles of negotiation

Land Law

- Understand the core principles of conveyancing, including the steps in a conveyancing transaction and the ability to identify critical ethical issues that potentially arise at each stage of the process.
- Critically reflect on, appraise and analyse pre-contract conveyancing issues, including differentiating the systems of title/estates and interests.
- Demonstrate a critical awareness of the issues arising during the investigation of title, the contract for sale and requisitions on title.
- Evaluate and judge the steps necessary to bring the conveyancing contract to completion, including critical issues relevant to the family shared home, planning matters, voluntary dispositions, bankruptcy and mortgages.
- Draft conveyancing documents with a high command of language and accuracy.
- Understand the core principles of landlord and tenant law, including the categorisation of tenancies and dealing with ground rent leases.
- Demonstrate a critical awareness of residential tenancies, including the rights and obligations of landlords and tenants.
- Provide clear and relevant advice to clients, and to other professionals with regard to commercial leases.

Probate

- Understand the core principles of Wills, including the content of a Will, revocation of a Will and the role of the Executor.
- Draft Wills with a high command of language and accuracy demonstrating a critical awareness of the statutory formalities for the making of a Will.
- Demonstrate a critical awareness of the process to accurately and comprehensively take instructions from the client.
- Critically reflect on, appraise and analyse spouses, civil partners, children and cohabitants on the formation and operation of the Will.
- Understand the core principles of probate practice and be able to conduct the initial meetings and preparation of the statement of affairs with a high command of accuracy.
- Evaluate and judge the steps necessary for extracting a grant of probate, a grant of administration intestate, a grant of administration with Will annexed and second and subsequent (De Bonis Non) grants.
- Provide clear and relevant advice to clients, and to other professionals with regard to non-contentious applications.
- Demonstrate a critical awareness of administration of estates after probate has been granted, including dealing with beneficiaries with a high degree of proficiency.

Taxation

- Understand the core principles of capital acquisitions tax and calculate with a high degree of accuracy the CAT payable and provide clear and accurate advice to clients and other professionals with regard to the application of the relevant reliefs/exemptions that are available.
- Calculate with a high degree of accuracy stamp duty arising on conveyances and leases and provide clear and accurate advice to clients and other professionals with regard to the application of the relevant reliefs/exemptions that are available.
- Demonstrate a critical awareness of CGT on conveyances of property and CGT on other assets.
- Evaluate and judge the issues relating to VAT arising on real property, leases and capital goods.
- Demonstrate a critical awareness of income tax and corporation tax from the solicitor perspective.

Family Law

- Understand the core principles of family law including demonstrating a critical awareness of the importance of taking accurate and comprehensive instructions and client care.
- Critically reflect on considerations pertinent to conflict in the family setting and resolution of family law disputes.
- Provide clear and relevant advice to clients, and to other professionals, with regard to separation agreements, judicial separation and divorce, cohabitation and maintenance.
- Demonstrate a critical awareness of relevant financial arrangements between the parties.
- Demonstrate a critical awareness of issues relating to domestic, sexual and gender based violence and trauma informed lawyering.
- Understand the core principles of guardianship, custody and access and to critically evaluate and judge the issues relating to the safeguarding of the welfare of children in need.

3.3 Specialist knowledge

At the point of admission, a solicitor should be able to demonstrate understandings in four substantial specialist areas of practice from the following list of indicative areas:

- Advanced Dispute Resolution
- Advanced Legal Practice Irish
- Advanced Probate & Tax
- Aviation, Leasing & Finance
- Banking Law
- Business Awareness
- Capital Markets for Lawyers
- Child Law
- Clinical Neg. & Claim Resolution
- Company Secretarial
- Commercial Contracts
- Communication Skills

- Data Protection
- Disability Law
- District Court Advocacy
- Employment Law
- Enforcement for Public Bodies
- Environmental Law & Climate Change
- Finance for Lawyers
- Financial Services Regulation
- Future of Lawyering in the Digital World
- Human Rights
- Investment Funds

- Commercial & Complex Property Transactions
- Corporate Transactions
- Corporate Social Responsibility
- Criminal Litigation
- Insolvency
- Mediation
- The Post-Pandemic Lawyer: Developing yourself from the Inside Out
- Presentation Skills
- Project Management
- Sports Law

Part 3

A Guide to the Development of Learning and Assessment to Support the

Competency Framework

Introduction

This Guide is addressed to the following readership:

1. Solicitor branch of the legal profession in Ireland
2. Providers of professional programmes, both primary programmes such as the PPC and providers of CPD
3. CPD learners, students, trainees and others involved as learners in the legal profession
4. All other relevant stakeholders in professional legal education processes in Ireland.

It summarises the design and content of a competency framework for the Law Society of Ireland. The content and method are derived from global best practices in professional education, in professional legal education, competency formation and frameworks, and recent Law Society of Ireland research on legal education and the professions.

Throughout, we have taken the approach that a competency framework (CF) is necessarily synthetic, and in three senses. First, it is based upon and synthesizes core skills, values, attitudes and knowledges that solicitors will use in their practices. Second, it is also a statement of capabilities such that stakeholders can expect them to be practised by newly-qualified lawyers at the point of admission, *ie* Day 1 solicitors. Third, it has been drafted with a view to the requirements not only of primary professional legal education in Ireland, but also of the profession for use in continuing professional education (CPD) and the transfer into the profession of legal professionals from other jurisdictions. As such, the framework requires standards to be attached so that all stakeholders are clear about the extent of skilled performance at any particular level of legal employment. For example, a course in client-based commercial law practices for lawyers with relatively little experience in the field would be significantly different to one designed for managing partners in a commercial law practice. The CF would lie at the core of both courses; but the standards will necessarily be set quite differently. In addition, the CF should be seen as an integrative holism, with the whole being more than the sum of its parts. How such integration might be achieved is described below.

A competency framework document can function as a regulatory or as a self-development tool, or as both. However, it cannot function as either without supplemental documents, which should include:

1. Standards of professional performance, and for accredited providers of training
2. A guide to learning and assessment practices using the CF
3. Guidance for future oversight and review functions of the competency framework
4. A regulatory approach to the development of lifelong professional learning planning and activities

This guide describes and gives examples of #1-3. It is beyond its remit to provide #4, which lies within the purview of the Law Society of Ireland; and whose policy in this regard will in part influence the future success of the CF (and to whom recommendations are addressed in the Report).

The concept of competency is discussed and defined in the CF, which should be read alongside this Guide. As will be evident from that document, we re-structure solicitor education around the concept of professionalism, and a brief discussion of that is required in this introduction.

Professionalism: its definition and its characteristics

Defined very briefly, professionalism comprises *the constellation of knowledges, values, skills, attitudes and practices appropriate to a profession.* It has to be acknowledged of course that the interpretation of almost every word in this definition can and has been contested. For instance, there is no single profession of law – research over the past 40 years has demonstrated the extent to which the legal profession globally is fissured and fragmented into multiple sub-disciplines and professions; and what is appropriate in terms of legal education to one group of educators in a jurisdiction may be quite different to another group in the same or different jurisdiction. Nevertheless, most professionals, and most of those involved in professional education, would recognise the basic validity of much of this definition. We shall use it in this broad sense here.

The statements of professionalism for educational and regulatory purposes often take the form of competency frameworks (CFs). These tend to be benchmark or minimum-attainment statements, and this is true of the CF developed in this project.[4] But CFs can also be statements of aspiration as well as adequate or minimum-attainment statements. In law, for example, as well as describing basic skills and knowledge, one might make statements about the need for engagement in justice and education, the links between education and democracy, or aspirations to intellectual and professional leadership through service and ethics. Such statements often serve as a 'meta-comment' or underpinning to the more detailed CF. They are an explanation of the values and attitudes that the profession strives to achieve and maintain.

In legal education we need to align the CF benchmark statements with aspiration so as to achieve an ecological balance. In our CF, therefore, we provide both, recognizing the dynamic tension between aspirational statement and benchmark performance. That balance is fluid, always in movement of one sort or another, and often dependent upon the survival and evolution of all entities in the ecosphere. Choose the wrong educational approaches or procedures at practical implementation, for instance, and the higher-level values begin to be eroded. Ignore the aspirational values at the top end, and both educational practices and theory become value-free at best (though it can be argued that values are always present, just not the moral awareness of them), and at worst unethical.

If professionalism is becoming an issue of key concern to educators, it is even more so for regulators of professions. Research for some time now has focused on what professionalism might be, how it might be taught and learned, and how it might be measured. Papadakis *et al*, for instance, set out to determine if medical students who demonstrated unprofessional conduct in medical school were more likely to be disciplined by their State Board. Their study set out possible correlative factors, including gender, grade point average, Medical College Admission scores, school grades, National Board of Medical Examiner Part 1 scores and negative excerpts from evaluation forms. The study subjects were alumni graduating between 1943 and 1989. They revealed correlations between unprofessional behaviour at medical school, and practitioners who had been disciplined by their profession. As they reported,

> We found that UCSF School of Medicine students who received comments regarding **un**professional behaviour were more than twice as likely to be disciplined by the Medical Board of California when they become practicing physicians than were students without such comments. The more traditional measures of medical school performance, such as grades

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[4] For a description of how the CF was constructed, see our Report.

and passing scores on national standardized tests, did not identify students who later had disciplinary problems as practicing physicians.[5]

In this project's CF the outcomes, particularly the statements of Professionalism which establish the threshold standard, were drafted with much of the recent research into professionalism in mind, and the evidence for which is set out in the Comparative Literature Review. It is not sufficient that we outline *what* skills or knowledge components are going to be the focus of solicitor education, or *how* they might be taught and learned within programmes of study and performance. We also need to consider the moral and ethical context of the programme, for instruction, performance and practice always exists in some form of ethical context, and requires us to choose which ethical context we wish to employ.[6] As Ronald Barnett has pointed out,

> A higher education designed around skills is no higher education. It is the substitution of technique for insight; of strategic reason for communicative reason; and of behaviour for wisdom.[7]

We therefore needed to define the value-context within which we want skills to be learned. At the outset, there were a number of key issues to be addressed. Integration of knowledge, skills, values attitudes and practices is essential. Our approach to such integration can be described as follows:

1. *Knowledge and skills must be taught within the value system of the profession*. Values such as integrity, industry, service and duty, wisdom, compassion, empathy, accountability and responsibility, all of which underpin professional relationships and activities – these values are part of the essential context of knowledge and skills and must be acknowledged as such. Where there is a dissonance or clash of values, this must be explored honestly – indeed such dissonances form critically important 'learning moments' in the understanding of professional values.

2. *Knowledge and skills are part of professional behaviour*, and professional behaviour can never be taught in classroom activities alone. It requires the presence of practitioners, and often the setting of office or court in order to complete the process. Even in office and court, however, the process of learning professional behaviour is not only taught overtly – it is caught in novice lawyers' observations of practitioners at work, in conversation, and at leisure. Similarly, on the PPC programme professional behaviour is caught in the interstices of the curriculum. It is in this sense that the 'hidden curriculum' and the 'null curriculum' of both PPC and CPD are useful concepts – that is to say, the unintentional lessons that learners absorb from a curriculum, and what is unofficially labelled as irrelevant or unimportant by its absence in a curriculum.[8] Law students learn professional behaviours by

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[5] Papadakis, M. *et al* (2004) Unprofessional behavior in medical school is associated with subsequent disciplinary action by a state medical board, *Academic Medicine*, 79, 244-79. See also Papadakis, M. *et al* (2004) Early detection and evaluation of professionalism deficiencies in medical students, *Academic Medicine*, 76, 1100-1106

[6] See for example Toddington, S. (1996) The emperor's new skills: The academy, the profession and the idea of legal education. In P.B.H. Birks, ed., *What are Law Schools For? Pressing Problems in the Law*, vol 2, Oxford University Press, Oxford. The problem of course is inherent in any professional programme – see Stenhouse, L. (1983) *Authority, Education, Emancipation* Heinemann, London. See also Maharg, P. (2007) *Transforming Legal Education: Learning and Teaching the Law in the Early Twenty-first Century,* Ashgate Publishing, particularly chapter four, '"By the end of this module…": the intimate dimensions of ethical education', pp.99-118.

[7] Barnett, R. (1994) *The Limits of Competence: Knowledge, Higher Education and Society*, Milton Keynes, Open University Press, 61

[8] Jackson, P. (1968) *Life in Classrooms*. New York, Holt, Rinehart, and Winston, 353; Eisner, E.W. (1985) *The Educational Imagination: On the Design and Evaluation of School Programs*, New York, Macmillan.

observing and imitating peers, tutors, and other role-models, not just in the classroom but in hallways, cafeterias, and elevators. As the literature suggests, the process of learning professional skills can be greatly enhanced by active engagement with professional issues in the classroom and in simulations where models of behaviour can be discussed to bring out the issues involved.

3. There is a substantial *difference between skills teaching and skills learning*. What even the best teacher teaches may not be what a learner learns from a teaching event. Any approach to education in professionalism must start from this fundamental point, and staff should be vigilant about their own practice in this regard. Teaching in professional skills should take the forms of coaching, supervision and feedback/forward rather than predominantly direct instruction, which will help to make teaching and learning more effectively aligned.[9]

4. *Best practice on the PPC programme, in traineeships and in CPD will require to be developed and shared among all*. The CF is not a blueprint for a new profession or new education. There is a considerable body of existing good practices in all three areas of professional education. Course directors and tutors will have a body of design experience and knowledge of their tutor and client base. Tutors will have experience of teaching and communicating with learners; and they will probably have taught with a high degree of autonomy in their classes. The Society needs to enable that shared experience within centres to thrive and develop effectively, but at the same time should ensure that models of good practice in professional education are carried out by all providers, both new and old, and along the lines of the CF. See Figure 1 below.

5. *'Good, fast, cheap – choose two'*. So goes the engineering saying, pointing out the common-sense relationship between these qualities, and it would seem to apply to education, too. The challenge for providers is to become genuinely more innovative in their designs for teaching and learning professionalism, and to use the CF to achieve that. The challenge for the Law Society as a regulator is to enable ways for this to come about, and to do so bearing in mind the financial costs of high-quality professional education. But the saying is based upon an impliedly competitive model of development. If providers collaborate on innovation and quality then it is possible to create forms of professional legal education that are better, and faster and cheaper to develop than might otherwise be possible.

6. *Learner perceptions of their skills-development*. It is fair to say that many students believe that they are fairly well-skilled when they graduate, and this is true of many (though not all) of them as regards academic skills. However, it is also true that the great majority of them will not have undertaken intensive skills training, or used professional resources to help them learn the professional practice of law. They need to develop new perceptions of training and education, of legal skills, and their own changing identities if they are to learn effectively. Just as a CF based on professionalism requires a culture change to be facilitated among teaching staff, so too will it be required among students.

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[9] See for example Wolf, F.M., Turner, E.V. (1989) Congruence between student and instructor perceptions of clinical teaching in paediatrics. *Medical Education*, 23, 2, 161-7

Overarching Competency Framework

Core & Mandatory – Day One competence

CPD -updating knowledge/skills (incorporating CPD scheme requirements)

CPD - career development – new knowledge/skills (incorporating CPD scheme requirements)
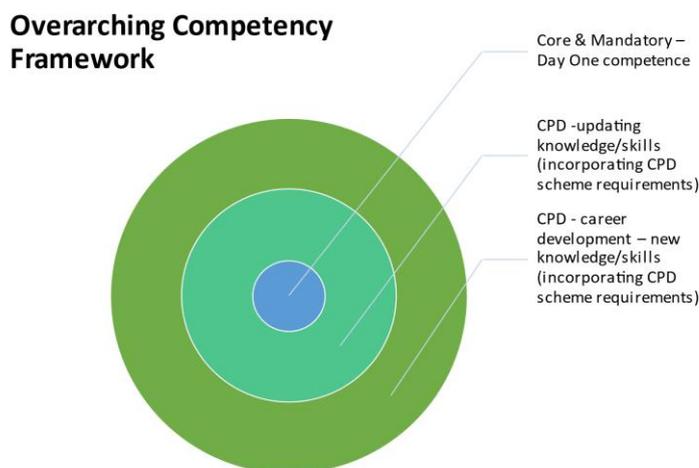
Figure 1: *Relationship of Competency Framework to CPD and ongoing professional development.*

If the Law Society's PPC really is to be a 'bridge' course, then the foundations of that bridge to professionalism are the core and mandatory competencies: Professional Ethics and Standards, and Professional Communications and Understanding of the Law and its Practical Applications. These competencies should declare to learners and others that ethics are regarded as critical to professional practice by the Society, and that effective communication is a critical part of the ethical dimension of professionality. Other professions recognise this – see for example the work of Hickson and others in medical education and ethics.[10] It also is proof that professionalism is held as a key educational quality by the Society – and again, there is good evidence that other professions have the same perspective.[11] As regards professional communications in the CF, two points should be noted:

1. The competencies and standard articulated in the CF should be treated as a definition of the minimum or threshold standard and breadth of experience that students should have on the

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[10] See Hickson, G.B. *et al*. (1992) Factors that prompted families to file medical malpractice claims following perinatal injuries, *Journal of the American Medical Association*, 267, 1359-63. The medical educational literature is considerable. See also Frank, V. *et al* (2000) A survey of physician training programmes and communication skills for malpractice prevention, *Journal of Law, Medicine and Ethics*, 3. As Frank *et al* point out, 'patients who feel ignored, deserted, or who suspect that there is a `cover up' by the medical profession, may be more inclined to sue. Failure to understand the patient and family's perspective and devaluing their point of view have also been identified as common triggers for lawsuits.'

[11] See for instance in medical education, Brownell, A.K.W. and Côté, L. (2001) Senior residents' views on the meaning of professionalism, and how they learn about it, *Academic Medicine*, 76(7), pp. 734–7; Bronwell, K.A. (2001) Senior residents' views on the meaning of professionalism and how they learn about it, *Academic Medicine*, 76(7), pp. 734–7; Ginsburg, S., and Stern, D. (2004) The professionalism movement: behaviors are the key to progress, *The American Journal of Bioethics*, 4(2), pp. 14–1; Ginsburg, S., Regehr, G., Hatala, R., McNaughton, N., Frohna, A., Hodges, B., Lingard, L. and Stern, D. (2000) Context, conflict, and resolution: a new conceptual framework for evaluating professionalism, *Academic Medicine*, 75(10 Supplement), pp. S6–11. Papadakis, M.A., Loeser, H. and Healy, K. (2004a) Early detection and evaluation of professionalism deficiencies in medical students, *Academic Medicine*, 76(11), pp. 1100–6; Papadakis, M.A., Hodgson, C.S., Teherani, A.P.D. and Kohatsu, N.D. (2004b) Unprofessional behaviour in medical school is associated with subsequent disciplinary action by a state medical board, *Academic Medicine*, 79(3), pp. 244–79. See also Breger, M.L., Calabrese, G.M. and Hughes, T.A. (2004) Teaching professionalism in context: insights from students, clients, adversaries and judges, *South Carolina Law Review*, 55, pp. 303–47.

PPC, and in CPD. In other words, students on the PPC and solicitors in CPD should have many opportunities to practise skills, and practise skills other than those identified in the CF, and with feedback. Providers should be encouraged to innovate imaginatively and go beyond the threshold skill set, ideally in the form of a spiral curriculum.

2. Because there is a difference between skills teaching and skills learning, the list should not be regarded as prescriptive of the skill set for a capable trainee. Students themselves should be encouraged to develop beyond the CF skill set. In this regard, portfolio learning in an ePortfolio is useful across PPC, traineeship and lifelong CPD in order to enable novice lawyers chart their progress in professionalism and their emerging skillsets as solicitors. This portfolio should focus not merely on skills, nor the fundamental values of ethics and communications, but also on the novice lawyer's own developing sense of professionalism.

1. Approaches to good practice

The development of professionalism in a programme of study is never an easy task. Those responsible for the change in teaching, training and assessment need to consider the following:

- the ways in which the teaching environment and the available resources can be used to structure student activity
- types of teaching and learning, and how the variety of learning styles affects knowledge acquisition and professional development
- how tasks and transactions are interleaved and integrated with each other
- the acquisition and development by students of a shared set of professional terminology – the external representations that provide a common ground for communication and shared understanding between students and teaching staff, between and students and training firms, and between novice lawyers and all others they encounter in their professional lives.

There is extensive literature on this in medical education. In a series of experiments on the role of biomedical knowledge in clinical reasoning, for instance, Boshuizen and Schmidt have shown that experts acquire a robust knowledge base that integrates situated and general knowledge.[12] Knowledge integration is an active process that involves articulating a global framework (the biomedical knowledge), reflecting on situated experiences (individual cases as they are encountered), and actively making connections between situated knowledge and the global framework.

This is also true of the legal domain. A lawyer in private practice will see something in the order of many thousands of cases in a working life. Through the experience of casework, she gains an extensive stock of what might be termed mental schemas and performance knowledge. Solicitors know this implicitly. When presented with a set of facts within their area of practice they are able quite quickly to invoke a schema and can test this initial schema against the evidence.[13] Lesgold suggests that, in the process of becoming an expert, a trainee acquires fragments of automatized procedure that gradually become integrated into extended sequences that guide performance. These sequences can be formed quite slowly from practice through the composition of fragments of activity, but the process can be made much more efficient if students are taught the procedures

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[12] Boshuizen, H. P. A. and Schmidt, H. G. (1992) On the Role of Biomedical Knowledge in Clinical Reasoning by Experts, Intermediates and Novices. *Cognitive Science*, 16, 153-184.

[13] See for instance the data collected regarding the practice of radiologists, in Lesgold, A., Glaser, R., Rubinson, H., Klopfer, D., Feltovich, P. and Wang, Y. (1989) Expertise in a Complex Skill: Diagnosing X-ray Pictures. In M. Chi, R. Glaser and M. Farr (eds.) *The Nature of Expertise*. Hillsdale, New Jersey: Lawrence Erlbaum.

explicitly, as a list of steps towards problem identification and solution and taught also to begin the process of case pattern recognition. These two forms of learning can bring trainees to a practical knowledge of a transaction much more efficiently if learning is carried out *via* simulation and transaction. In this respect what is true of biomedicine and radiology and many other professional health domains is equally true of professional legal practice.

What are the best ways to achieve this? There is no one perfect road, and there is much literature about which methods are effective for which skills and in which teaching environments and stages of learning.[14] Whatever method is used, it ought to be highly experiential and include elements such as role-plays, case studies, simulations, structured interviews, prompted recall, detailed analysis of achievements and performance problems in skill practice and the like.

Great benefit can be derived from intensive coaching sessions with a focus on feedback and review. It is also the case that development in professionalism in primary professional education such as the PPC is greatly enhanced if skills are embedded across the curriculum in realistic transactions. Much of the medical literature on clinical skills emphasises the importance of immediate feedback, of opportunities for practice following review, and of practice within different contexts.[15] Local CPD providers are often best placed to know what educational provision is required, given their knowledge of tutors, changing legal contexts, and other conditions. However there is always a tension between local innovation and ensuring at least minimum standards across the jurisdiction.[16] As stated above, the problem can be resolved if jurisdiction-wide CF standards exist as threshold or minimum standards, and best practice is shared among providers.

2. Learning & competency – some general principles

Curriculum design principles

The competencies described in the CF provide a sound basis for a contemporary professional education environment, one that helps achieve protection of the public interest, is flexible for educational providers, is capable of helping to ensure good practice and quality of standards across providers of legal services, and can be used as both a regulatory tool and a tool for self-development of lawyers in Ireland.

The key features that define the framework are as follows:

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14 See for example Taverner, D. et al, (2000) Comparison of methods for teaching clinical skills in assessing and managing drug-seeking patients, *Medical Education*, 34, 4,285-291. See also Eaton, D.M., Cottrell, D. (1999) Structured teaching methods enhance skill acquisition but not problem-solving abilities: an evaluation of the "silent run through"', *Medical Education*, 33, 1,19-23. As they point out, there is 'some evidence to support the hypothesis that different teaching techniques may be more effective for improving different elements of skills learning. In particular, a highly structured technique involving breaking complex tasks down into smaller components and utilizing an internal 'commentary' may be an effective way of teaching the sequential motor components of complex clinical skills.

15 See for example Kneebone, R. et al (2002). An innovative model for teaching and learning clinical procedures, *Medical Education*, 36, 7, 628-34.

16 In a wider context this is precisely what medical education is setting out to achieve. The work of the Institute for International Medical Education is crucial in this regard (www.iime.org). See for instance Wojtczak A. & Schwarz, M.R. (2001) International standards in medical education: what they are, and do we need them? paper presented at the AMEE Conference, 2-5 September, Berlin, Germany; World Federation for Medical Education Task Force (2000) Defining international standards in basic medical education. Report of a Working Party, Copenhagen 1999, *Medical Education,* 34(8), pp. 665-675; World Health Organization/Education Commission for Foreign Medical Graduates (1995) Towards a global consensus on quality medical education: serving the needs of population and individuals, Proceedings of the 1994 WHO/ ECFMG Consultation in Geneva, Switzerland, *Academic Medicine,* 70(7), Suppl.

1. The competencies begin with an **over-arching statement** articulating the baseline standard and key aspects of Professionalism, and three sets of competencies: Professional Ethics and Standards, Professional Communications, and Understanding of the Law and its Practical Application*.*

2. The design model incorporates **holistic and spiral** learning. Thus, learners should return to knowledge or skills at successively higher levels of understanding and processing, and in different contexts; and this can be achieved by the setting of higher standards, depending upon the status and experiences of learners.

3. Competency often refers to basic standards of performance. The standards of competency set out by the Law Society of Ireland should be **intellectually rigorous** and set **high professionally-skilled outcomes** from the outset as set out in the introductory section on professionalism in the Competency Framework.

4. Where possible, providers of both primary professional education and CPD should ensure that **assessments will integrate knowledge, skills and attitudes,** and in this regard providers should be innovative in their educational practice, following best practices in other jurisdictions and other professions.

5. The competency framework and standards should be used by regulators and training designers as **design guides to performance,** and by students and trainees as guides to capable performance. Performance thus becomes a benchmark of competency. However, checklists, competencies and outcomes lists can only determine general adequate performance. Regulators and providers of legal education should **encourage learners' individual voices and interests**, and the development of **personal responsibility** for engaging with legal practice, with ethics and justice, and undertaking lifelong CPD.

6. **Transactional learning** should be one of the guiding principles of curricula designs. Thus content authors on the PPC should design tasks that trainees would be expected to carry out in legal practice, and all aspects of the curriculum should support this.

Programme flexibility

Below is a graphical representation of the competency framework:
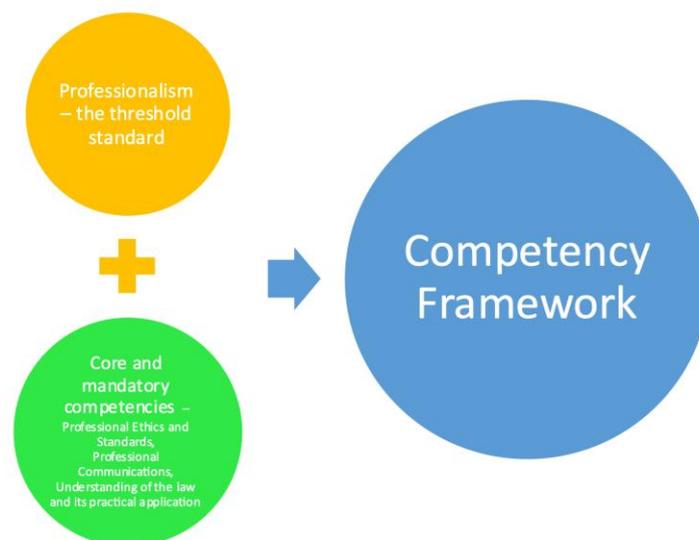
Figure 2: *Relationship between Professionalism and the core & mandatory competencies*

Core & mandatory competencies

The core & mandatory competencies consist of the three sets of outcomes shown above. Professionalism constitutes the core values and attitudes of the profession that informs all other aspects of the competency framework. Professional Ethics and Standards comprise the rules of conduct and related regulation of solicitors in Ireland. Educationally, these competencies would be taught as a discrete unit of regulatory rules, on its own or as part of other units of study; but should also feed into all other areas of legal competency or as part of integrative case-studies, and as a pervasive subject on education programmes. Professional Communications consists of all the skilled behaviours and understandings that are normally associated with the work of a solicitor – legal writing, interviewing, legal research, and the like. Understanding of the Law and its Practical Application is the knowledge of law and practice which underpins everything lawyers do. The content of this is set by the structure of the PPC and any other prescriptions in place for the period of work-based training. All three sets of competencies are core in the sense that almost all lawyers would be expected to attain certain standards in them before qualification. For this reason it is suggested that they be treated as mandatory.

Competencies and the spiral curriculum

All skills and knowledge development within the competency framework should take place according to the principles of a spiral curriculum. Below is a graphical model of such principles, which provide a sound basis for a contemporary professional education environment, one that is flexible for providers while ensuring good practice and quality of standards yet allowing local innovation.
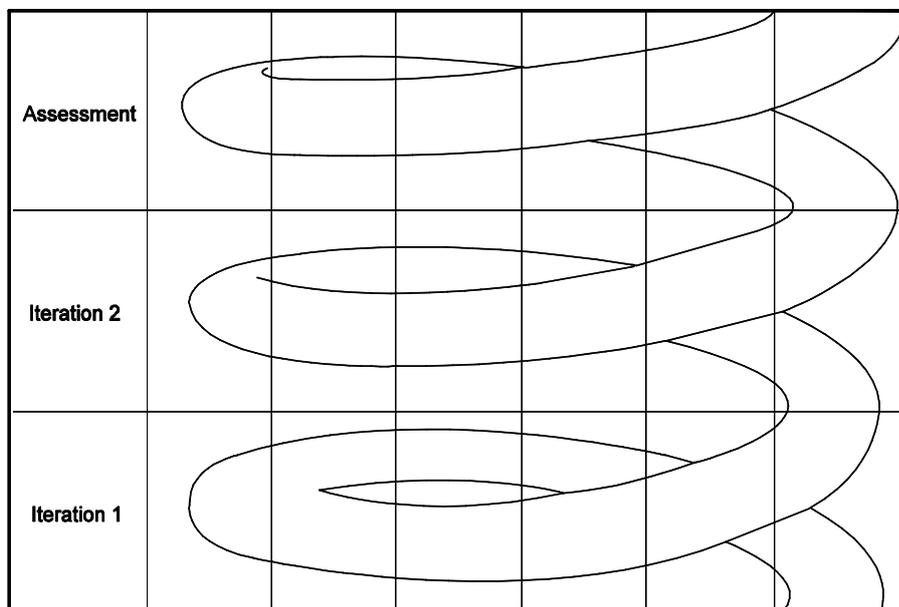
Figure 3: *Skills spirals in, for example, interviewing skills*

The spiral metaphor is a useful way of envisaging the framework because it allows for a number of passes through the material to be learned, at more sophisticated or complex levels of knowledge or

attainment. This is crucial for the development of skills, for without it, skills development is simply a flat structure, with little or no development.[17]

It also allows different skills to be taught at the same time in an overlapping learning process. If we take the example of interviewing skills and following a basic cycle of *tell-show-do- review*, learners in either primary professional education courses or on CPD could be given multimedia resources and then workshops where they practise the models of the skills they have been shown. At a later date they could then go through the same cycle of *tell-show-do* and the same skills set but at a higher level of sophistication – this time, the interviews could include a second interview with the same client, instead of another initial interview with a new client. At the end of this process students could be assessed by videotaped unseen client scenario. Or students could interview simulated clients (SCs) in the first cycle, receive feedback, and then be assessed by SCs in their final assessment.

These examples demonstrate how a spiral curriculum can operate in the development of skills. It provides a model for all providers within which to set up scenarios, teach by simulation and role play, and give feedback. Together with appropriate resources and tutor training, approaches such as this should significantly raise the standard of skills coaching and learning. Moreover, it is a model of learning that can be both client-centred and justice-centred as well as learner-centred. It is also a model which by its nature encourages an innovative and interactive approach to learning.

The spiral curriculum is also amenable to integrative teaching and assessment. It is possible, for example, for a case study in the core to be based on the 'triple-jump' assessment used in problem-based learning medical programmes. There, a student is given a case-history of a patient. At this first stage, the student presents an analysis of the case-history to assessors. Stage two consists of diagnosis: the simulated patient presents with symptoms and complaint. The student demonstrates analytical and clinical skills, as well as those of patient care and management. Stage three consists of prognosis: the likely trajectory of the complaint, given the patient's case-history, together with supporting evidence.

This 'triple-jump' integration could easily be adapted to professional legal training and built into a spiral curriculum. For instance on the PPC, a simulated business client who has already engaged the virtual firm of students on commercial matters, comes to a firm with a problem or business opportunity. Stage one could involve an interview, for which students would require to carry out preparatory reading and research based on the client's casefile. Stage two, *post*-interview, could involve problem-solving analysis and legal research. Stage three may involve negotiation or advocacy, or both; and at any of the stages there could be writing or drafting tasks built into the integration. The case-study could be used for learning purposes only, or for assessment, or for both; but in all cases would be founded upon the CF. The concept of 'entrustable professional activity' (EPA) is a useful here. An EPA, according to medical educators, is a unit of professional practice that can be entrusted to a sufficiently competent learner or professional'.[18] The unit of practice requires

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[17] Of course it simplifies the process of multiple and adjacent skills development, eg the ways that interviewing and professional relationships or drafting impinge upon each other. Nevertheless it is a useful way of envisaging progress within skillsets. Should an app be developed to map such progress it would be a very useful graphical indicator.

[18] Cate, O. ten. Chen, H.C, Hoff, R.G, Peters, H., Bok, H., Schaaf, van der, M.F (2015). Curriculum development for the workplace using Entrustable Professional Activities (EPAs). AMEE Guide 099e. Available at Association for Medical Educators in Europe (AMEE) Guides, https://services.amee.org/AMEE/Shop/AMEE_Guides_-_Electronic/AMEE/StoreLayouts/AMEE-GUIDE-Electronic.aspx?Category=AMEE_GUIDE&hkey=0510aa5d-e249-4343-a2dd-d5986de19b52

proficiency in clusters of competencies simultaneously. It is therefore a more suitable focus for sophisticated assessment within legal service providers than the assessment of individual competencies in series. Novice lawyers develop capability within an area of law as they learn the outlines of transactions common to that area, a firm's ways of communicating with clients and with other professionals, the management of risk, the nature of client-based services and the development of business practice. All these are examples of EPAs. And of course the approach applies to competency development and CPD for professional lawyers beyond novice level to advanced levels of practice.

What we have with the spiral framework, the triple-jump and EPA assessment is a significant move away from a design where each topic is taught in a series of what are effectively watertight containers and where there is little if any deep integration between sets of competencies, to a learning design where there is much more integrated learning. Such integration is essential if primary professional education is to be integrated with lifelong professional learning, and if the CF is to facilitate the movement of solicitors from one area of practice to another; the movement of practitioners into different roles within a legal service employment, and the movement of lawyers into Ireland from other jurisdictions.

Indeed, the spiral curriculum can apply not only to a learner's ascent in skills and knowledge within a programme of study, but across the whole arc of professional legal education in a jurisdiction. In this respect, while we might expect new competencies will be attained as a practitioner becomes more experienced and moves into new areas of law and legal services, the core competencies will remain the same. What will change, however, are the *standards* to which a practitioner will practise the competencies. Standards are therefore a critical component of competency-based education, setting out as they do the detailed routemap to higher capabilities in the practice of law. They can be adapted, too, to create more complex integrations of skills and knowledge components for learners, depending on their stages of development.

Below are four approaches to the development of knowledge, skills and professionalism in a competency framework that are examples of good practice:

Cognitive 'tell-show-do-review' structures of learning

The original concept of *tell-show-do-review* belongs to the domain of cognitive psychology and is used extensively in other professional educational fields such as dental education and paediatric education. In the legal domain it has been used in fields as diverse as judicial education and court management for indigenous court judges.[19] It involves moving through each of the skills in cycles, on a highly cognitive model of syllabus design. Thus, in teaching the skills of interviewing, there might be a lecture/demonstration of the legal context, with comment, description, parable. Next, learners could be shown examples of actual legal interviews, or simulations, on video or digitised video within a multimedia environment that stimulates them to think about

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[19] See for paediatric and dental health example (the literature is considerable), Freeman, R. (1998) Tell-show-do: reducing anticipatory anxiety in emergency paediatric dental patients, *International Journal of Health Promotion and Education*, 36, 87-102. See also Brigman, G, Molina, B. (1999), Developing social interest and enhancing school success skills: a service-learning approach, *The Journal of Individual Psychology,* 55:3. For cognitive educational approaches and judicial education, see Armytage, L. (1996) *Educating Judges: Towards a New Model of Continuing Judicial Learning,* Kluwer International, Den Haag, 121-3; 125-7. For the reference to court management for indigenous court judges, see The National Judicial College courses at http://www.judges.org/

issues and model their thinking and behaviour.[20] Participants would then put into practice what they had learned about good practice in workshops. They would be given feedback on their own practice, and if necessary, they could be referred back to the 'show' stage. The 'do' and 'review' stages could then be repeated.[21] The heuristic works well because students have the opportunity to observe and reflect on expert demonstration (and with multimedia, they can do this as often as they want); they then practise under the eye of an expert who can give feedback on how well the learner's attempt at interviewing matched the expert's expectation of learner performance.

This is an example of simple, applied cognitive theory that can work powerfully when used with students to introduce them to complex areas of skills. It can be adapted to higher skills levels, where often there is a requirement for discussion of skills and integration with legal knowledge and more sophisticated problems.

Mastery learning

Mastery learning is usually associated with learning that is individualized and frequently self-paced. In self-paced learning, the student moves at his or her own pace through the requisite learning, which may involve reading, writing, listening to lectures, participating in classes, creating, problem-solving and the like until the objectives are mastered, with periodic assessments along the way, some of them self-administered, to measure progress, detect weaknesses, prescribe strengthening exercises, and finally to certify mastery. There are three key elements in the development of mastery learning environments:

1. the stipulation of clear, comprehensive, and measurable learning objectives, often based upon a competency framework
2. assessment instruments that can test for mastery and be part of the teaching-learning process for students who have not yet sufficiently mastered the material or the competencies.
3. the capacity of the system to move the learner on to new and appropriate learning objectives after a particular set has been realized.

Self-paced mastery learning is clearly more appropriate for any learning that requires either rote memorization or the performance of an easily described and performed skill. Higher level learning – complex syntheses of concepts or complex problem-solving in authentic human situations – is more difficult to define, assess, and package for self-pacing.

In both basic and higher skills, and in what one might term 'awareness' topics, the potential of individualized, self-paced instruction has been greatly enhanced in the last few decades with the introduction of digital learning technologies such as MOOCs, multimedia learning and the like. Technology does not guarantee learning of course; but coupled with changes in pedagogy, economies of scale, and a shift to self-paced mastery learning, the potential for greater learning productivity via online web platforms is considerable.

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[20] For an assessment of video (as opposed to the more sophisticated multimedia environments) and personal teaching, see Mir, M.A. *et al* (1984), Comparison between videotape and personal teaching as methods of communicating clinical skills to medical students, *British Medical Journal*, 289 (6436), 31-4. As they point out, 'Videotaped demonstrations can be as effective as personal teaching of clinical methods, and video should be developed as a medium for first line clinical teaching.'

[21] For more detail on the use of multimedia at the 'show' stage, see Maharg, P (2001) Legal skills and multimedia: enhancing student learning, Third Learning in Law Initiative Annual Conference, http://www.ukcle.ac.uk/lili/2001/maharg.html

Collaborative learning

Students learn not only from texts, media, tutors and supervisors. They also learn from, and with, each other. Collaboration greatly helps the process of knowledge consolidation and skills learning, so long as students are able to give constructive feedback to each other and are aware of how best to work in groups to achieve goals. Surprisingly little extended group work has taken place generally in legal education. Given the benefits we would advocate that much of the learning that takes place around the CF could be collaborative in nature.

3. Digital technologies in competency-based training and education

There are several difficulties that arise with the setting of competencies for legal education technology:

1. What is stated does not represent what happens in practice because practice changes so swiftly.
2. Learning about digital technologies is bracketed off from the realities of legal practice.
3. There is no vision for what the future of digital practices in the profession might look like.
4. Regulation may constrain rather than encourage educational innovation

The use of digital technologies in legal education provision in this area has its own difficulties:

1. A provider's knowledge of current digital practices in the legal workplace needs to be constantly refreshed; and the curriculum needs constant adjustment in the light of that.
2. A curriculum requires a digital plan that identifies how teaching resources will be created, sustained and developed further.
3. Where there are significant innovations, they tend to be of short duration, rarely followed-up, and rarely sustained within a stable curriculum structure, whether in primary legal education or CPD.
4. Because of the fast-moving nature of digital innovation, the contexts of digital legal practices need to be grounded in wider conceptual understandings of the effects of digital upon society – for example the digital divide, digital capitalism, accessibility, collective intelligence, the knowledge economy, convergence and remediation.
5. Educators need to plan how digital learning will be pervasive across a programme of learning and on four levels:
    a. practical issues (how staff and students will engage with applications, including accessibility)
    b. policy issues (especially the regulation of digital apps and associated issues such as privacy and internet governance)
    c. theory issues (eg digital change and the professions; digital access to law & the administration of justice; digital and democracy)
    d. recognition by providers of the diversity of approaches to technology between legal service providers. The work context of a large Dublin firm will differ substantially from that of a small rural practice, and again from that of in-house counsel or government lawyers. This practice diversity requires to be taken into account in a curriculum and in CPD.

6. Academic software use is quite different from professional software use even in an application common to both such as Word or Excel. The capability to use software for professional purposes is an important skillset, and educators should plan for provision of skills education and its assessment (both formative and summative) in this area.

Finally, to link competency statements in the CF to specific digital applications is unhelpful, given the digital churn that we live in today and for the foreseeable future. What is required is a framework for understanding how digital technologies are revolutionizing our society, and for understanding the effects that they are having on legal education and the legal profession. We would argue that such understanding involves the following:

1. Critical digital literacy in which the technologies underlying digital applications in use in the professions are understood in their functions and their effects on legal stakeholders – eg machine learning, AI, and AR (augmented reality)
2. Analysis of different forms of regulation for digital technologies and digital professional education – what works for legal education and the profession, what constrains understanding of the digital domain.
3. The history of production, curation and design of digital applications relevant to the legal profession and the research that underpins earlier use of digital applications in legal education. Much of the intellectual effort we make in the digital field is to attempt to understand the present and future. In the process, we may forget about our past, its lessons, and how digital has changed the identities of the professions that we now are in our jurisdictions. It could be argued that a profession that is history-less in this regard will have only a limited understanding of its future.

For all these reasons we have set out the competencies at CF 2.6 as a widening spiral, from practical to theoretical and cultural, that attempts to address these issues.[22]

4. Work-based education – training the trainer

Work-based education can take so many different forms that it is almost impossible to summarise them as categories. However it is clear from current best practice and for the integration of primary legal education and CPD to work, that the provision of effective work-based training requires the involvement of personnel within the legal service provider who have an understanding of learning and training methods. This will require a knowledge of educational theory and practice in legal education, and in the educations of our sister disciplines such as medical education, engineering education and accountancy education. In these professions, particularly medical education, there is considerable literature on how staff can best be trained for specific forms of educational approaches – and not only staff in formal teaching positions, but those involved in professional education generally. This is especially so

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[22] We acknowledge here the excellent work of Alison Egan, Director, IT & eLearning, Marino Institute of eLearning; and her reference to the map of digital skills in Irish HE at https://www.allaboardhe.ie/map/. We believe that a similar map should be constructed for professional legal education. With regard to the training of staff in digital skills, the EU DigiCompEdu is useful as an overarching framework: https://ec.europa.eu/jrc/en/digcompedu. Staff interested in learning more about the nature of digital learning may find interesting and provocative views in Bayne, S., Evans, P. *et al* (2020). *The Manifesto for Teaching Online*, The MIT Press, Cambridge, MASS.

when there are innovative forms of legal education in use in the curriculum or CPD, where there is a particularly acute need to plan staff education and communications amongst staff.

As an example of this, consider the following diagram below (Figure 4). It represents a guide to the full lifecycle of a simulated legal transaction – in effect, the simulation of any legal matter. It was discussed in more detail in the book cited below.[23] The lifecycle starts with analysis, followed by creation and pre-transactional preparation, which leads into the implementation of the simulation, and the final step is a post-transactional review. At each stage, academics, law practitioners, simulators, administrators and others are involved in tasks to develop the simulation.

Throughout they need training to know their roles, understand their tasks, the wider educational contexts of the tasks, the effects of this approach to legal learning on everyone involved, and above all the effects on student learning. They also need to know the parts being played by others on the team. At each stage, ie each column, there were meetings where creators, tutors, administrators and others were present; minutes were produced and circulated at the time of the meeting so that the decision-cycles were swift, and development work was conducted in short intensive sprints to enable focused creativity.

The whole team also needs to be part of the post-transaction review. This will be truly 360-degree, and the feedback informs the next iteration of the simulation. Having full-circle reviews ensures that inconsistencies between feedback can be caught and investigated. It also proves to the whole team involved in the simulation that the feedback from all matters equally; and that the aim is a better education for students, and better experiences for all staff in creating that.

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[23] See Maharg, P. (2007). *Transforming Legal Education: Learning and Teaching the Law in the Early Twentieth-Century.* Routledge, London, chapter seven *passim.*

Figure 4: *The full lifecycle of a simulated legal transaction.*

Transaction analysis

- Analysis of current forms of teaching, learning and assesment. Strengths & weaknesses. Place of ICT

- Liaison with practitioners over details of scenario narratives.

- Open or bounded field transaction. Identification of transactional narrative. Development of micro-tasks and characters.

- Identification of learning outcomes and feedback and assesment points.

- Feedback to practitioners regarding transaction shape and assessment points.

Creation of transactional tools, materials & resources

Creation of communications lines, showing which communication objects will go where, when, what will be done with them.

Creation of fictional characters.

Creation of websites in Ardcalloch to support the communications lines between students, tutors and characters, fictional and real.

Creation of or addition to the functionalities of the student workspaces, ie virtual offices.

Design and creation of tutor monitoring and assessment pages.

Design of transactional realia, including bank statements, bills, share certificates, death certificates, template letter replies, title deeds, etc.

Creation of variables in databased documents, and hosting of documents in a document server. Creation of transaction information for students and staff. Testing of system.

Pre-transactional preparation

- Project information communicated to students.

- Students trained in use of transactional learning environment tools.

- Liaison with teaching staff over shape of transaction, place in syllabus, resources, feedback arrangements, etc.

- Staff training systems reviewed.

- Administrators given access to draw data on student achievement

Transactional learning, teaching & assessment

No lectures: students attend seminars on specific transactional topics.

Transaction tracks the seminars, so that what is discussed in seminars is practised in the transaction.

Students liaise in firms over the completion to deadlines of the four main assessed tasks and other tasks -- drafting of initial writ, in-gathering of estate and payment of debts, calculation and payment of inheritance tax, drafting of a will.

At each stage they receive feedback from tutors and assessment of their work.

If required they redraft work or seek further information.

Tasks are assessed according to criteria and to standards that are set out for students in the information they receive about the transaction.

Post-transactional review

- Project information review and revised. Online materials revised.

- Student training systems reviewed.

- Staff information reviewed and revised according to feedback from tutor meetings.

- Staff training systems reviewed.

- Administration processes reviewed, in the light of changes made to other parts of the system.

Modes of assessment

Professional competency is a multi-dimensional concept, and it is unlikely that a single approach to assessment will be adequate in the assessment of professional skills, knowledges, values and attitudes. Within the context of a professional education and training programme, it is essential that assessments are part of the aims of the programme and its learning outcomes, and are fair, valid, reliable and feasible assessments of professional learning and teaching.[24]

It is of course a counsel of perfection to insist upon these four criteria. Nevertheless the success of a competency framework relies upon assessment conforming as closely as possible to these four criteria. This is as true of the assessment of competency in primary programmes such as the PPC as it is of evaluation of lawyers on their ongoing competency. For this reason reliability, fairness, validity and feasibility are key concerns for any competency framework, and are described in more detail below.

Once again, professionalism is a key concept here. Assessments of learner performance should take into account the professionalism outcomes set out in the CF. In this sense, the assessments should be based upon the values inherent in the profession's moral and social ecology. In previous years, it is fair to say that professional capability has been assessed largely in terms of cognitive capacities. Professionalism, however, is a more complex concept, and requires a wider range of assessments to give a valid and reliable sense of professional competency.

Assessment of professional competency is a complex and fast-evolving field. In other professional educational fields there is a recognition that appropriate assessment requires innovation and imaginative thinking.[25] At the same time, it is the case that all forms of assessment are limited in the data they give assessors. This is true of assessment in professional legal education too.
In general terms the:

- *content* of assessment should be as close to actual practice as possible
- *form* of assessment should be as close to actual practice as possible
- there should be a *balance between over-assessment and learning without assessment*
- *consequences* of assessment should matter to learners. Thus in primary professional programmes such as the PPC assessments should be varied but some of them should be high-stakes – that is to say, learners should not progress if they fail skills or knowledge assessments of the basic learning outcomes of the twin pillars of Professional Communications and Professional Ethics and Standards; and should be required where appropriate to pass all assessments to qualify.

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[24] See for instance Bone A., Maharg, P. (eds) (2019). *Assessment and Legal Education: Critical Perspectives on the Scholarship of Learning and Assessment in Law*. Volume 1: England. Canberra, ANU Press, Introduction.
[25] See for example the forms of assessment advocated in the many fields of medical education – https://www.gmc-uk.org/-/media/documents/Assessment_in_undergraduate_medical_education___guidance_0815.pdf_56439668.pdf. ACGME assessment guidelines at https://www.acgme.org/Meetings-and-Educational-Activities/Annual-Educational-Conference/, and in particular http://www.acgme.org/Outcome/assess/Toolbox.pdf, and professional bodies such as AMEE – Association of Medical Educators in Europe, particularly their extensive and thoroughly researched paper series on medical education, BEME (Best Evidence in Medical Education) at https://www.bemecollaboration.org/Published+Reviews/

Part of the problem with assessment is a cultural one. Assessment practices are a statement of institutional and professional practice. To some degree, professional learning, skills and professionalism have been regarded as being of lesser importance to knowledge-learning; and this has been reflected in the form of assessments used. For culture change in assessment to come about on this issue, both staff and students need to build confidence in assessment instruments that measure improvement in professionalism and skills and knowledge *combined*. In this respect we can learn a lot from the assessment procedures of other professions such as medicine and construct our own versions of assessments of legal professionalism, skill and knowledge. But if assessments of professionalism are to become predictive of ability, then careful thought needs to go into their construction so that, as high-stakes assessment, they are valid and fair.

Inevitably this leads us to consider the reason why an assessment is being held. Contrary to the ranking system in undergraduate education, both providers of primary professional legal education and CPD should be much more concerned with competency in professionalism and the demonstration of performance of ethical values. This is a significant shift in culture and emphasis, not only for students but for staff as well, for it is probably the case that much of the high-stakes assessment that takes place is based upon understanding and application of knowledge and tested in knowledge-based examinations.

The best forms of professional skills assessment combine the following to give a profile of a student's developing professionality:

- Peer evaluation[26]
- Performance evaluations by practitioners[27]
- Simulated client evaluations[28]
- Real client comment
- Self-perception and reflection[29]

Use of a combination of these approaches will ensure that we have reliable and valid instruments for ensuring competency in skills.

5. General assessment principles

The following eight general principles apply to professional legal education:

1. Assessment must be valid
Assessment must be valid according to the CF. A variety of evidence is probably the best method of ensuring validity of assessment. Validity can be best tested by including the profession in the design

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[26] For instance by calibrated peer review (http://cpr.molsci.ucla.edu/) or self- and peer-assessment evaluation criteria supported by learning resources – see Barton, K., Westwood, F. (2006) From student to trainee practitioner – a study of team working as a learning experience, *Web Journal of Current Legal Issues*, 3, http://webjcli.ncl.ac.uk/2006/issue3/barton-westwood3.html. See also the useful peer assessment form at https://engineering.purdue.edu/CATME/BARSform.doc

[27] For example objective structured video examination, in Humphries GM, Kaney S. (2000) The Objective Structured Video Exam for assessment of communication skills. *Medical Education,* 34, 939-45.

[28] See for instance Chalabian, J., Dunnington, G., (1997) Standardized patients: a new method to assess the clinical skills of physicians, *Best Practice in Benchmarking Healthcare*, 2, 4, 174-7; Barton, K., Cunningham, Jones, C.G., Maharg, P. (2006) Valuing what clients think: standardized clients and the assessment of communicative competence, *Clinical Law Review,* 13, 1, 1-60, New York University Press

[29] For example in professional portfolios – either paper portfolios or *ePortfolio*s.

of the assessment. This can be done by the use of external examiners, or by the formative evaluation of assessment by practitioners prior to the use of assessment with students.

2. Assessment must be reliable

Clearly assessment ought to produce reliable data about student knowledge and skill. Reliability can be tested by a number of methods – the use of statistical co-efficients, the use of observers, the monitoring of inter-rater reliabilities, and test > re-test reliability of candidates' abilities or knowledge are some of them.

3. Assessment must be fair

Assessments ought to be constructed so that they are fair to all candidates. Practitioners and educators should work together to determine cut-scores in the design of assessments. Where scenarios are re-cycled, the questions or tasks asked of them should be quite different to previous assessments.

4. Assessment must be feasible

All the above qualities must be viewed in the light of what is feasible or practicable for a provider to arrange as regards assessment. There is little point in highly complex assessments which may well achieve high reliability if performed well, but which are performed poorly because they are too complex to achieve their results or too costly to run effectively.

5. Assessment ought to be aligned with the competency framework of the profession

The student and trainee learning experience lies at the heart of the new programme, and teaching and resources should be aligned to ensure that this experience is meaningful, challenging and relevant. Learning should be both individual- and group-based. It should involve use of a variety of learning resources, and providers should ensure that student learning is aligned to assessment. Learning activities should be imaginatively designed, well-resourced and should support student learning. It is the duty of the providers to state how their assessment programme helps students to achieve the learning outcomes of the course as stated by the Society. Where required, providers should design more detailed task objectives than the learning outcomes provided by the Society.

6. Learning outcomes and assessment objectives should be embedded in the key tasks to be undertaken in any module.

It is not feasible to assess or evaluate every item of knowledge, skill or attitude on a programme, and therefore a provider will require to identify those task objectives which are representative of the more general learning outcomes, and structure assessment around these. Providers should, however, try to assess Professionalism competencies.

7. Assessment should include multiple assessment points and observations

Professionalism is multi-dimensional, and assessment practice should reflect this. Formative feedback should be given to students; and where feasible, assessments should give both staff and students data that will show a line of improvement or failure to meet learning outcomes. Pre-specified standards of performance should be available to staff, students, external examiners and the Society. In particular, such standards should indicate the criteria under which borderline pass or fail performance is judged.

8. Assessment should support and analyse the values of the professional community.

Assessment should not be a repetition of the culture and values of the profession only, but should engender reflection on, and be an analysis of, the culture, values and attitudes of the legal profession.

6. Forms of assessment

In more detail below is set out a number of approaches to assessment practice that can be used with a professional competency framework, with comment on their appropriateness (note that the categories are by no means closed):

Open book and case-based examinations

These assessments mimic some of the features of professional practice, and therefore are more fitting assessments of professional learning than academic assessments. Relevant examples of assessment types include:

- short-answer questions (which assess information recall)
- extended matching set questions (which test application levels as well as content knowledge)[30]
- modified essay questions (which test problem identification and decision- making skills)
- extended matching items (which test application of knowledge within an extended case-based system of assessment, and which is often employed in a context of multiple-choice questions).[31]
- objective structured long examination record (OSLER – a 10 item analytical record of the traditional long case in medical education)[32]

Coursework assessment

This can take the form of specific pieces of work that are submitted during the course of a primary professional programme such as the PPC as well as CPD, and can include the following:

- case histories
- case assignments (for example, simulated interview, followed by a letter on action, thus assessing interviewing and drafting skills in the same scenario)
- simulated client records, either paper or electronic or both.
- video essay or report (where students comment upon performance in video)
- project assessment, debrief and summary in ePortfolio
- 360-degree evaluation instrument (ratings completed by supervisors, tutors, peers, mentees, simulated clients)
- Objective Structured Clinical Evaluation (OSCE) using simulated clients
- diagnostic thinking inventories
- oral presentations
- critical incident reports
- educational mentoring and appraisal
- workbook, log or ePortfolio
- creation of checklists
- transactional learning

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[30] See http://www.edteck.com/dbq/testing/const_resp.htm

[31] See Wood, E.J. (2003). What are extended matching sets questions? *Bioscience Education*, 1,1, 1-8

[32] See for instance Troncon, L.E.A., Dantas, R.O., Figueiredo, J.F.C., *et al* (2000). A standardized, structured long-case examination of clinical competence of senior medical students, *Medical Teacher*, 22, 4, 380-85; Traynor, M., Galanouli, D., Rice, B., Lynn F. (2016). Evaluating the objective structured long examination record for nurse education. *British Journal of Nursing*, 25, 12, 681-7. The authors concluded that 'the findings indicate that the OSLER ensures more holistic assessment of a student's clinical skills and particularly essential skills such as communication, and that the OSLER, together with the OSCE, should be used to supplement the assessment of clinical competence in nursing education'.

- reflective learning projects[33]

Collaborative assessment

Some forms of assessment actively promote collaboration between students; and this is certainly a practice to be encouraged.[34] While all students concerned in a collaborative assessment may agree that all have contributed to the work, it is useful to have a more objective measure of this, too.

ePortfolios

An ePortfolio can contain a record of all learners' work, including coursework, reflection and review, digital copies of assessments, eg essays, reports or video, all based upon the CF. It can also contain all summative assessment results. Ideally, some form of ePortfolio would be in use during the PPC; and if this were taken up then it may be the case that the transition from primary professional education to lifelong CPD will be more streamlined for students, novice lawyers, legal service providers and the Law Society.

There is a variety of ePortfolios on the market, but the strength of many of them is that they enable students and practitioners to:

- o Reflect upon their learning
- o Build a body of work that represents their cumulative learning
- o Can be linked to work-based contexts in a highly flexible way
- o Can contain or be linked to any other digital asset, eg word-processed document, financial sheet, video or audio files, etc.

Self & peer assessment

Development of self-awareness in professional development is essential. Self- and peer assessment forms part of modes of assessment of professional learning in many professions. This could be developed within the context of the competency framework so that, for example, a novice lawyer can be given formative feedback by assistants or administrative staff, and that assessment can be formalized along these lines. This can be carried out by staff using assessment instruments that form part of an ePortfolio, for example.

Triangulated assessment

For work-based assessment to be reliable, there needs to be a third view of the work produced by students, quite apart from the view taken by the student and the workplace supervisor. Self- and peer-assessment is important of course, but triangulating assessment can produce better reliability of assessment. It can also produce valuable consonance and dissonance of feedback that leads to deeper reflection on the part of the learner.

7. Developing standards for the Competency Framework

At a practical level, standards are essential for competencies. They ensure that the competencies are being met broadly by learners and providers. For this reason, they are a necessary element in skills assessments, where they can be described as 'assessment criteria', ie descriptive of the standards that can be expected of learners at any particular stage in their professional careers.

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[33] See Morin, L., Howells, L. (2003) The reflective judgment project, *Clinical Law Review*, 9, 623-54; Leering, M. (2014). Conceptualising legal practice for legal professionals. *Journal of Law and Social Policy,* 23, article 5.
[34] There is of course already collaborative learning taking place on the PPC.

Use of these criteria in the PPC and by all providers of CPD should ensure at least a measure of standardisation. There is of course a balance to be struck between local innovation and imagination, and the minimum standards to be upheld by the Society. Absolute standardisation is impossible; but it is possible to develop a sense of what is an acceptable achievement under any particular competency. For that to happen, it is important that standards are stated by educational providers. They help students on the PPC and professional lawyers in CPD to understand and meet expectations.

The process of developing standards, however, is not a simple one; and it is essential that not only the providers but the profession and its regulators are satisfied with the processes by which standards are set, as well as the outcomes of assessments. To illustrate how important standards are to the implementation of the CF, the following example explains how the competencies of the CF can be used to develop standards. We will take the example of Interviewing competencies, and specifically 2.2, point 2, which states:

- Conduct a client-centred interview making the client feel confident and comfortable, and listening carefully and respectfully to the client

Key words here are 'confident', 'comfortable', 'listening'. Any development of standards by a provider needs to state the range of behaviours that would give rise to appropriate standards in interviewing skill. The usual process of developing standards would be to obtain views from practitioners, clients, educators, consumer groups and other stakeholders – effectively a working party – on what constitutes a range of acceptable behavioural standards, and to represent this on a spectrum from 'not yet competent' to 'outstanding'.

In a project entitled the Simulated Client Initiative, those of us involved in it did just that, and we produced the following three sets of assessment criteria, set on the following three pages (note that the assessment criteria are addressed to Simulated Clients (SCs)).[35]

I felt the student lawyer listened to me.

[Law Society of Ireland, CF, ref: 2.2, point 2]

This item is designed to assess the degree to which the lawyer can listen carefully to you. These criteria focus especially on the early part of the meeting when the client should be encouraged to tell their story and concerns in their own words. This entails *active* listening – where it is necessary for the interview structure or the lawyer's understanding of your narrative. The lawyer will not interrupt, cut you off, talk over you or rush you in conversation. The lawyer reacts to your responses appropriately. The lawyer may take notes where appropriate, but if the lawyer does so, the lawyer should not lose much eye contact with you. To some extent in this item we are concerned with what the lawyer does *not* do that facilitates the interview.

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[35] See Barton, K., Cunningham, Jones, C.G., Maharg, P. (2006). Valuing what clients think: standardized clients and the assessment of communicative competence. **Error! Main Document Only.***Clinical Law Review,* 13,1, 1-65.

1	2	3	4	5
Lawyer prevents you from talking by interrupting, cutting off, talking over, rushing you. Takes over the conversation prematurely as if the lawyer already knows all the answers.	Lawyer limits your opportunity to talk by interrupting, cutting you off, etc. You are allowed to answer specific questions but are not allowed to expand on topics.	Lawyer rarely interrupts or cuts off or rushes you. The lawyer reacts to your responses appropriately in order to allow you to tell your story. More interested in notes taken than in eye contact with you.	The lawyer is clearly listening closely to you. If the lawyer interrupts, it is only to assist you in telling the story more effectively. Lawyer provides opportunities for you to lead the discussion where appropriate. Good eye contact and non-verbal cues.	The lawyer is an excellent listener and speaks only when it is clearly helpful to your telling your story. Lawyer uses silence and other non-verbal facilitators to give you an opportunity to expand. Excellent eye contact and non-verbal cues.

I felt comfortable with the student lawyer

[Law Society of Ireland, CF, ref: 2.2, point 2]

This item is designed to assess the degree to which the lawyer can connect at many levels with you so that you feel comfortable telling the lawyer everything important, even on uncomfortable topics. The lawyer should seem interested in you as a person and not treat you as a routine task or problem to be solved. Key aspects to look for: attentive, polite, comfortable, pleasant, interested, connection.

1	2	3	4	5
Lawyer was bored, uninterested, rude, unpleasant, cold, or obviously insincere. Used inappropriate remarks. No empathy.	Lawyer was mechanical, distracted, nervous, or lacking in empathy. Slightly distant and unsympathetic. Little empathy.	Lawyer was courteous to you and encouraged you to confide in him or her. You felt reasonably comfortable with the lawyer.	Lawyer was very attentive to and interested in you. You felt confident to confide in him/her. Good empathy between you.	Lawyer showed a genuine and sincere interest in you. There was a real sense of empathy and connection between you and the lawyer.

I would feel confident with the student lawyer dealing with my situation

[Law Society of Ireland, CF, ref: 2.2, point 2]

This item is designed to assess the degree to which the lawyer can gain the client's confidence in his or her ability to handle the client's case. Signs include attempts to gain client confidence, structuring the legal matter, sensitivity to client issues, allowing the client space to talk and explain while maintaining a structure to the interview, and making the client feel as secure as possible in the world of legal matters.

1	2	3	4	5
No confidence that lawyer will help you. Lawyer is insensitive to client issues; or lawyer dominates interview and client; no apparent structure to meeting. A lack of certainty and direction from the lawyer.	Not sure that lawyer will help you. Lawyer is distant or domineering, but some attempt to be sensitive to client concerns. Or little attempt to structure the interview. Not sure where the lawyer is going with questions.	There is some structure to the interview. The lawyer understands what is most important to you and you feel fairly confident that the lawyer will be able to help you.	Feel very secure in the lawyer's ability to help you. Good structure, manner is helpful and lawyer is sensitive to client issues. Transitions clear and lawyer attempts to reassure client where necessary, and tries to structure the legal matter.	Feel totally secure in lawyer's ability to help you. Excellent manner, with good transitions, well-structured interview. Lawyer actively provides focus and direction, but no domineering attitude; pleasant and confident.

These assessment criteria form the standards for competency in Interviewing 2.2 point 2. As you will see, the behavioural items in these assessment criteria for SCs match the competency description quite closely. This is important because SCs are trained to assess the client-facing skills of the lawyer or law student. The criteria are prefaced by an introductory statement describing the general context of the skill. Then the skill is broken down into behavioural items most closely associated with the skill by our working party of stakeholders and set out on a spectrum from poor performance to outstanding performance.

SCs use the criteria in formative assessment, ie directly upon the end of the interview they discuss in their own persons, rather than the character of a client, what their experience of the interview was according to the assessment criteria. This debrief discussion is hugely helpful to learners in jurisdictions as different as Japan, Ireland, Australia (ACT), Canada (Ontario, Saskatchewan, Alberta, Manitoba, Nova Scotia), Scotland, England, USA (New Hampshire). The criteria have also been used by SCs to assess learner skills in high-stakes assessments.

If these criteria are used to train SCs to judge learner performance you can appreciate their power to achieve standardisation across the student cohort, and across year groups. If they are shared among providers then they help to reduce the variation between providers; and the effect of sharing and discussing such criteria can further help to crystallize what exactly the standards mean. Moreover they can be used not just for domestic legal education, but to assess the skills of foreign-educated and accredited lawyers wishing to practise in the jurisdiction of Ireland.

They can also be adapted to different professional situations, not just client interviews. Below is an example from a pilot carried out by Maharg with the National Skills Academy for Social Care (NSASC)

to determine how simulation might be best adapted to the work of NSASC.[36] We focused on the training of Registered Managers (RMs) of care homes. Using the competencies drawn up for the organisation, a set of standards was created using a group of regulators, NSASC staff, clients, RMs and other stakeholders. Below are the assessment criteria created for Leadership, and particularly as demonstrated in a Performance Review Interview, where the simulated client was a simulated enactor, playing the part of a care home employee being managed by the RM. Note the similarities with the legal interview standards and assessment criteria set out above, and note too the differences.

9.   The RM demonstrated leadership in the context of this situation

This item is designed to assess the degree to which the RM can demonstrate *situational* leadership. This criterion focuses especially on the extent to which the RM adapts leadership abilities to a specific situation and to a specific audience. The contextual leadership abilities that we are focusing on here are those of relationship-building, communication and improved performance, as per the references below.

> *Leadership Framework Qualification* references:
> LF2.3:   Building Relationships – Engages with and supports others
> LF3.1:   Communication – Communicates skilfully with colleagues, service users and
>   stakeholders
> LF5.1:   Continuously Improving Performance – Creates a culture of high performance with a
>   clear sense of purpose.

1	2	3	4	5
No response to your situation; does not engage with your issues and problems. You feel as if the RM is hostile, cold, antagonistic and makes no effort to understand your motivation or your situation, focusing only on her or her immediate situation. No discussion of wider values of the organization.	Some response to your situation. The RM attempts occasionally to engage with your issues by asking questions or responding briefly to your own. Some attempt at empathy, no attempt at taking your situation into account in resolving the situation. You feel he or she is indifferent at best, most of the time uninterested in either your situation or your motivation. Little or no discussion of wider	RM seems reasonably interested in your situation. He or she asks questions, but demonstrates this only intermittently. Is distracted, unfocused. More interested in obtaining a resolution to the situation that suits him or her. Some communication of service values or purpose and the role you play in that as an employee.	The RM is clearly interested in your situation. He or she asks questions, and you feel that the RM has a grasp of your situation and motivation, and empathizes with it, though this is not sustained throughout the interview. A skilful attempt at discussion of your situation, the needs of the organization and the values of the organization. Some sense of continuous improvement required.	The RM is wholly attentive to your situation and your issues, and demonstrates this throughout the interview. You feel your situation is completely understood. RM demonstrates skilful integration of your situation with the needs of the organization and its values. He or she communicates clear vision of the organization where a culture of high performance is required from its employees. The RM is an excellent listener and speaks only when it is clearly helpful to your telling your story. RM uses silence and other non-verbal

[36] For the work of the organisation, see https://www.nsasocialcare.co.uk/.

	values or purpose in the organization.			facilitators to give you an opportunity to expand. Excellent eye contact and non-verbal cues.

The format of this assessment schedule is highly adaptable, while still based upon the fundamental competencies of the CF. This is only as it should be, for assessment of skills in context can take many different forms. The Likert scale of 1-5 could become 0-4, or 10-50, and doubled to give a percentage. Banding could be used instead of marks. Students could be assessed on EPAs, on multiple skills that are inter-dependent, within an OSCE for example. Providers may also wish to weight elements of the assessment differently, depending on the aims and context of the assessment.

At Strathclyde University, for example, on the Scottish equivalent of the PPC, the assessment of interview skills was carried out by SCs, and based upon eight 'global criteria', each criterion set out, as above, on a Likert scale of 1-5. This gave a total of 40 which was doubled to 80 and treated as a percentage. The remaining 20% was given over to two related assessment points. The first was a set of simple factual questions on lawyers' performance that SCs answered from memory (eg 'Did the lawyer ask you if you already had a will', 'Did the lawyer ask for your contact details', etc), to which the SCs answered either YES or NO. The second was a one-page summary of the interview drawn up by the lawyer directly after the interview, stating the main legal points and relevant facts arising from the client narrative, and summarising next steps to be taken by lawyer and client. Both were worth 10%, and therefore the global criteria awarded by the client was much more important; but all three elements of the assessment had to be passed or the assessment was assessed as a fail.

In this assessment the overwhelming predominance of the marks awarded to the SC's assessment of the lawyer's client-facing skills is key. It signalled to students how important the assessment criteria were to us as educators, and for them as novice professionals. But so too is the lawyer's ability to obtain information basic to the situation; and the lawyer's understanding of the basic legal principles at stake in the interview. These were of lesser importance in this assessment, though – hence the lesser marks associated with them.

Three final points are worthy of note. First, in the Strathclyde assessment, knowledge and skill are being assessed, and not just in the second and third parts of the three-part assessment but in the SCs' judgment of whether the lawyer made them feel comfortable and confident, and listened to them. Second, this set of assessment criteria is applicable to novice lawyers. It could also be relevant to more experienced lawyers, for the assessment criteria can be adapted to different levels of experience. Third, if the standards of a set of assessment criteria built upon the CF are deemed not appropriate to the level of experience of the lawyer group or the context of a particular type of interview, then the standards can be altered in order to accommodate the more sophisticated experience that a group of senior lawyers may have, or the circumstances of specific types of interviews –examples of the latter could include interviewing the victims of crime, particularly assault and rape, or interviewing children or adults with diminished capability.

Part 4

Literature Review: Thematic Summary

Introduction

This literature review comprises:

1. A general summary of the themes raised by our analyses of the literature, comprising 20 themes grouped under three headings, followed by a detailed resumption of the evidence for these gained from the literature;
2. A review of the literature on methods of developing competency statements within the legal and medical professions; and
3. A review of the literature on competency statements in three common law jurisdictions (namely England & Wales, Australia, Canada).

The term 'literature' is used loosely throughout this Part. A 'literature review' is normally associated with peer-reviewed works written by academics discussing research. In our view, rigorous research on competencies of solicitors in most jurisdictions (including those reviewed here), is substantially lacking. The items summarized in this literature review are largely the opinions of the authors or are reports prepared by individuals or agencies where there is little, if any, information about the data collection processes or the qualifications of those gathering and analysing the data. Most data gathered in a systematic way about competencies tend to be based on stakeholder engagement. There has been little objective information testing, either by sampling or by longitudinal research, to determine what solicitors need to be able to do to perform their roles in a competent manner.

We have included literature from the last 40 years, going further back in time where it seemed necessary to include items that were sufficiently important in their empirical findings or theoretical significance to be included. A range of databases were consulted; the resulting dataset, arranged by Angela Yenssen, was read by all project personnel; and the report was compiled by all members of the team. The cut-off date for items included in the literature was September 2020. In our thematic summary we have recorded the citations of all items either in footnotes or in brief and accessible reference lists at the end of sections.

1. General summary of the themes raised by our analyses of the literature

There are twenty themes in the information assembled in this document. These themes are helpful in the construction of a competency statement for Irish solicitors. They cluster around three broad issues: the nature and value of competency frameworks, appropriate content for frameworks and lessons learned from English and Welsh legal educational experiences.

Themes

The nature and value of Competency Frameworks

1. *Mixed views about the value of competency frameworks*

- Some articles/reports question the trend towards using competency frameworks to determine the ability to practice – there is a concern that competency frameworks become reductionist lists, do not engage overarching fundamental principles, and are not holistic
- Other articles/reports extol the virtues of competency frameworks as modernizing the profession in ensuring consistency of performance and equitable access to the profession

2. *Mixed opinions on whether the same framework can be used to address day one competency and continuing competency*
   - Some articles/reports indicate that senior practitioners can use a generic framework developed to ensure competency on the first day of practice to support their continuing competency by applying the framework to their specific context
   - Other authors argue that important senior level competencies are missed if established practitioners and day one practitioners are subject to the same competency framework, such as management competencies relevant to senior practitioners who move into management roles and want guidance for performing their jobs

3. *Little engagement with the idea that frameworks could apply before qualification*
   - The predominant model for competency frameworks is that they do not activate until the first day of licensure
   - A framework developed by the British and Irish law librarians applied during training and one other report questioned the limitation of competency frameworks to day one licensure; but these instances are exceptions to an entrenched pattern that competencies start on day one of licensed practice

4. *Competency frameworks have some shared structural elements*
   - Competency frameworks reviewed generally used the structure of a succession of categories each of which is defined and associated with behavioural indicators
   - However, the place of knowledge varies between frameworks – some competency frameworks embed knowledge requirements in the framework while others separate knowledge from action

5. *Different models of continuing competency*
   - Some sources define continuing competency as continuing to meet the day one practice standard while other sources expect a higher performance level over the years of practice although no additional credential is associated with higher performance
   - Yet another model is requiring accreditation of competency only to receive a new credential/privilege

6. *Transparency is essential*
   - Transparency as a basis for the development of a competency framework is essential to its credibility

The content of Competency Frameworks

7. *How to determine scope and performance level of competencies*

- There are two main concerns when building competencies: determining the scope (range of activities to include) and quality (level to which activities should be performed)
- The predominant model to determine competencies is stakeholder engagement but alternatives were suggested, namely reviewing complaints about solicitors and consumer feedback about solicitors

8. *Academics appear to have different views on definitions of competencies*
   - In three articles/reports, academics were out of sync with the opinions of other stakeholders regarding meanings of terms and / or required competencies

9. *Tension between specialist and generalist approach*
   - A regularly recurring theme was tension between creating a generalist competency framework only or a framework that also incorporates specialist skills and knowledge
   - There was no consensus regarding usefulness of generalist framework for specialist practitioner or if anyone is truly a generalist who benefits from a generalist framework

10. *Risk of over/under inclusion*
    - No consensus on how detailed and numerous competencies should be

11. *Building blocks of attributes or activities*
    - There seems to be a preference for activity-based framework but the idea of building personal attributes into framework also arose

12. *Inclusion of affective domain*
    - Several sources identify the importance of emotional competency for solicitor practice or skills associated with it (empathy, respect, communication) and one source is critical of the SRA for excluding emotional competencies

13. *Inclusion of technology*
    - Regularly recurring theme that competencies related to technology should be included

14. *Inclusion of ethics and professionalism*
    - Regularly recurring theme that these two subjects were important

15. *Competencies specific to Ireland*
    - Irish language is mandated in courts and legal practice by legislation so likely needs to be part of competency framework in some way
    - European Union law will remain very important for Ireland, distinguishing it from England and Wales post-Brexit

16. *Clear definitions of terms are essential*
    - Several sources identify that terms associated with competencies can have very different meanings, including the term competency itself
    - Terms 'affective,' 'professional,' and 'ethics' examples of terms associated with multiple meanings or domains
    - Value of competency framework is greatly diminished if meaning of included terms is not explicit

17. *Develop competencies with the process of assessment in mind*
    - Consensus that competencies need to be capable of assessment
    - Several respondents to SRA consultation about competencies were reluctant to comment because the meaning of the competency would be clearer if the framework for assessing it were known
    - Strong debates over centralized exam (SQA) proposed to assess competencies after competencies approved has highlighted questions about content of competencies
    - English and Welsh experience suggests there is potential value in discussing scope, quality, and assessment of competencies at the same time to ensure all elements support each other – flaws in one element may only become clear in discussing another

18. *Explaining meaning of statement content in a consultation paper is a sign of problems with the statement*
    - SRA amended its competency statement after the consultation on the document due to respondents expressing concerns about a couple of aspects of the competencies that had been explained in the consultation paper
    - This process suggests that items requiring explanation in the consultation paper should probably be clarified upfront in the competency statement

19. *Use the competency framework to differentiate the professions*
    - A few articles/reports criticize the SRA for failing to use the competency statement to provide clarity regarding the difference between solicitor practice and other legal professions

20. *Do not simply repackage what already exists*
    - SRA has been criticized for repackaging existing education requirements in a new format rather than engaging in critical reflection to determine what is actually essential in the education requirements.

2. Thematic summary of literature on methods of developing competency statements within the legal and medical professions

In this section we review some of the literature on methods of developing competency statements within the medical and legal professions. In particular we explore the best methods in terms of their rigour, validity and outcomes. The section focuses on:

- The motives driving the development of competency statements, and the effects these motives had on the framework product and the methods used to achieve it

- The methods themselves

- The relationship between the research and the competency statements

- Any transferable learning for the Law Society Finuas Skillsnet (LSFS) project

The development of Competency Frameworks in the medical professions

We focus on the development of competency statements in six areas of practice:

1. GPs (Patterson et al 2000 and 2013)

2. Psychologists (Hunsley et al 2016)

3. GP/Family Medicine Practitioners (Czabanowska et al 2012)

4. Nurses (Leung et al 2016)

5. Academic physicians (Daouk-Öyry et al 2017)

6. Mental Health Practitioners (Troller et al 2017)

Competency framework methods for GPs

Patterson et al, conducted the initial research in 2000 to develop competencies for GPs in the UK. They subsequently reviewed their 2000 research in 2013 (Patterson et al, 2013).

They were motivated by changes in the profession: 'given recent changes in the role of the GP, there is a need to more clearly define the skills required for the role, both to guide career choice and to more accurately specify appropriate selection techniques.' (p188). Their aims were:

- To provide potential applicants with a realistic job preview of the skills required of a successful GP, thereby improving self-selection,

- To inform the development of medical selection procedures relevant to the job role

- To construct a framework for use in designing future training and development activities.

In terms of methodology they used a 'multi-method approach to analyse the behaviours associated with successful performance and to triangulate findings', as this had not taken place previously for GP practice. They emphasised the importance of incorporating the views of the end-user (in this case the patient), as well as GPs to ensure 'ecological validity'.

Method

Three independent studies were conducted to define GP competencies:

- critical incidents focus groups[37], with 35 GPs from the Trent region

- behavioural coding of 33 GP–patient consultations

- critical incidents interviews with 21 patients from a Midlands-based medical practice.

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[37] The use Critical Incident Technique (CIT) is particularly recommended to determine competencies in medical settings. In this case focus groups were formed and individuals asked to write down on a card a critical incident where good behaviours had been displayed by a GP; then on another card to write down when poor behaviours had been displayed. This then provides the focus for group discussion about how to describe those competencies.

The research team concluded that, 'The model can be used to guide career choice and self-selection by detailing 'what it takes' to be a successful GP. Potential applicants can be given a detailed description of the behaviours and personal attributes that are crucial to the job role and, in doing so, can shape expectations of what will be required of them in the job.' (p192):

> 'Using the results [the Competency Framework], it would be possible to develop more accurate and job-related selection methods, thereby increasing the likelihood of selecting the right person for the job.' (p192)

> 'The model can be used to identify future development needs for applicants because it is assumed that candidates will not be competent in all areas… Specifically, the 11 competencies could be used to examine the training needs of GPs in different geographical regions and different levels of experience.' (p193)

The Royal College of GPs performs a quasi-regulatory role in relation to GP training which is slightly different in emphasis to LSFS. Nevertheless, it is useful to know that they anticipate the use of the framework to be broader than regulatory.

In 2013, Patterson et al replicated their previous job analysis study of the GP role in the UK in order to examine whether the competency domains and selection criteria for doctors entering general practice training needed to be updated. In particular, it was felt that this research would be informative in relation to developing policy around training, career development and workforce planning.

Method

A multisource, multimethod approach comprising four phases was used:

- stakeholder consultation (n = 205) using semi-structured interviews, focus groups and behavioural observation of practising GPs
- data coded using a 2-level card sort method
- a validation questionnaire based on results from phase 1 (n = 1082)
- an expert panel (n = 6) to review and confirm the final competency domains.

Eleven competency domains were identified. They identified a new domain 'Leading for Continuing Improvement' which was in keeping with the broadening of the role of GPs in UK NHS and the new focus on skills and capabilities outside the consulting room i.e. in relation to leadership, professionalism and commissioning activities. Empathy and Perspective Taking, Communication Skills, Clinical Knowledge and Expertise, and Professional Integrity were rated the most important domains: 'research consistently shows that the cornerstone of effective selection is identifying selection criteria through job analysis studies' (exx1)

Job analysis 'is a systematic process for the collection and analysis of job-related information to provide a framework with which role specific selection criteria can be identified and prioritised. Results are used to develop behavioural indicators for use in assessment when operationalising a selection method' (exx2). In more detail,

> 'Research consistently shows that effective performance of high stakes job roles requires employees who are sufficiently confident in their abilities to take on broader duties, and here, the concept of self-efficacy is an increasingly important construct to evaluate. Self-efficacy refers to people's judgements about their capability to perform particular tasks, and evidence shows that job holders who feel capable of performing particular tasks will perform

them better, will persist at them in the face of adversity, and will cope more effectively with change.' (exx7)

They suggest more weight is put on particular domains depending on the purpose for which the framework is used.

Transferable learning

This research is helpful in identifying the importance of job analysis to the development of the framework, and as an example of a framework where different domains have different weight which is likely with the LSFS project given the diversity of legal practice in Ireland.

Competency framework methods for Psychologists

This research by Hunsley et al (2016) is from North America (the US and Canada) and relates to the development of a competency framework for psychologists.

Method

- Competency Framework developed by a Task Force appointed by a professional body

- Feedback gained from a broader group

- Competency Framework tested on profession by means of a survey. The survey was particularly aimed at discovering whether there was any agreement on the timing when specific competencies should be attained.

'When distinct time points in training and licensure or registration were considered (i.e. entry-level supervised practice in practicum settings, advanced-level supervised practice during internship, entry level independent practice (0-3 years of licensure), and advanced practice (more than 3 years of licensure), there was limited agreement by survey respondents with the competency framework's proposal about when specific competencies should be attained. In contrast, greater agreement was evident by respondents with the competency framework when the reference point was focused on entry to independent practice (i.e., the competencies necessary for licensure or registration).' (p908)

'The final framework included the Scientific Knowledge cluster and five competency clusters: Evidence-Based Decision Making/Critical Reasoning, Cultural and Interpersonal Competencies, Professionalism/Ethics, Assessment, and Intervention/Supervision/Consultation.' (p910).

This was further broken down into 37 competencies with 277 associated behaviours which operationalise the competencies at the four stages of professional training and practice set out above (an example is set out below).

Table 1

Behavioral Exemplars for a Specific Competency in the Intervention, Supervision, and Consultation Competency Cluster

Specific competency:
Apply evidence-based interventions to promote health and well-being (e.g., positive psychology); enhance growth and performance (e.g., coaching, performance management, conflict resolution, and organizational change); and reduce risk factors and increase resilience (e.g., population-level interventions).

Level 1 (Practicum) behavioral exemplar:
Understand and articulate the need to establish and maintain working relationships required for successful implementation of interventions.

Level 2 (Internship) behavioral exemplar:
Implement a wide range of techniques and interventions based on an advanced understanding of research, theory, and supervisory input.

Level 3 (Entry to practice through three years of independent practice) behavioral exemplar:
Independently develop, implement, and assess interventions.

Level 4 (After 3 years of independent practice) behavioral exemplar:
Independently develop, implement and assess interventions in complex or high-stakes circumstances.

The sample for the survey was weighted: it was 'selected to balance respondents by geographic area and to overrepresent respondents at or near entry level to independent practice.'

'Agreement' with the framework was judged as (a) when at least 50% of survey respondents provided ratings of competency attainment that coincided with the competency framework and (b) Cohen's (1992) recommendation regarding a moderate effect size for analysing the extent to which a proportion differs from P=.50'. They found poor and very poor agreement using these two measures:

> 'far more agreement was evident when attainment was considered only before or after licensure or registration, rather than during the four time points' (p913).

They concluded it was important that CF remained in hands of the profession, that it could be fluid and flexible, and that it was important to instil personal development.

Transferable learning

This research was interesting for a variety of reasons:

- Although the methodology appears simple, it is in fact following the model followed by most professional bodies (small group design, testing, expert group views sought)

- They decided what 'agreement' would look like ahead of the survey

- They found it difficult to get agreement on anything other than what was needed at the point of licensure which could also be an issue for the LSFS framework

- Possibly as a consequence of this lack of agreement, they bought into a 'fluid and flexible' model, which appears to align with LSFS objectives

Competency framework methods for GP/Family Medicine Practitioners

Czabanowska et al, produced a report in 2012 on the development of a comprehensive framework of quality improvement competencies for use in CPD for European general practice/family medicine physicians.

'A competency-based curriculum focuses attention on the outcomes of the instruction and how it improves the learner and the learners' work rather than focusing purely on acquiring knowledge (as is often the case with traditional instruction).' (p175)

Method

- Literature review from which the initial framework was developed

- Consensus development panels (international participants) – 2 rounds

- Delphi technique – 2 rounds

They were aiming for 90-100% census and both surveys were conducted via SurveyMonkey.

The Literature review led to a preliminary list of competencies. The competencies were then 'organised into domains synthesized from the sources or based on existing frameworks for general practice and quality improvement'. (p176)

The Consensus development panels evaluated and made changes to the initial draft. Each panel member was asked to mark each competency according to its relevance for inclusion in the model and suggest changes. Initial participants were asked to review revised version. As an additional quality check, they recruited an expert to evaluate the process.

The aim of the Delphi group was to validate and establish consensus on a final framework. 'The Delphi method helped us to create an environment that allowed for partial anonymity, iterations of the survey, and controlled feedback.' (p177). The Delphi group consisted of a minimum of 10 respondents over 2 rounds. In Round 1, participants were asked about each domain and competency (yes/no/with changes). They were aiming for 90% consensus. Round 2 was much shorter, participants were asked to agree with the edits that had been made to the previous draft. They achieved 100% consensus on domains and 92% on competencies.

They concluded that the framework was a useful tool for identifying gaps in knowledge and skills and guiding development of curricula in Europe and N. America.

After the Literature review, the Competency Framework included 5 domains, 55 competencies. The final version was 6 domains and 35 competencies.

FIGURE 1. Competency Framework in Quality Improvement for Family Doctors in Europe

Transferable learning

This research is interesting because the objective is similar to that of LSFS, namely 'identifying gaps in knowledge and skills and guiding development of curricula'. It also provides useful insight into how they applied the Delphi technique.

Competency framework methods for Nursing

Leung et al, produced a report in 2016 in relation to their work developing a Competency Framework for evidenced-based practice in nursing in Australia.

They described competency as 'a combination of the complex attributes of knowledge, skills and attitudes; with the ability to make professional judgement and to perform intelligently in specific situations.' … 'competency reflects a person's cognitive approach to a task, encompassing the multiple attributes of knowledge, skills and attitudes whereas competency highlights a person's ability to perform those tasks within the defined context of professional practice' (p190)

> 'The practice of competency-based educational assessment (CBE) has emerged over more than three decades and is widely adopted by the medical and health disciplines. … Learners are expected to take responsibility for their learning…The emphasis of CBE is to enhance an effective integration of knowledge and skills.' (p190)

Method

- Review of standards within Australian and international literature.

- Iterative review and amendment.

- Survey of 3 specific stakeholder groups

Transferable learning

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They concluded that the Competency Framework was useful but 'there remains some uncertainty and disagreement about the levels of … competency required of nurses' (p189). This may be an issue for the LSFS framework.

Competency framework methods for Academic Physicians

In 2017, Daouk-Öyry et al, reported on their work in developing a competency framework for academic physicians in the Middle East.

> 'There is a gap between the knowledge, skills, and abilities physicians acquire in their education and those required of academic physicians in their multifaceted role as teachers, clinicians, researchers, and administrators.' (p269)

Method

- Semi-structured interviews and Critical Incident Technique with 25 academic physicians at a teaching medical centre in the Middle East region inquiring about the behaviours of academic physicians in teaching, clinical, research, and administrative roles.

- Using content analysis, the authors identified 16 competencies: five 'Supporting Competencies', common to all four roles of academic physicians, and 11 'Function-Specific Competencies', specific to the role being fulfilled.

- The coding system and classification were reviewed by an expert vetting panel including 2 researchers plus another author who was not initially involved in the analysis.

The supporting competencies were:

- Communication skills

- Managing teams

- Continuous education and development

- Professional ethics and integrity

- Emotional intelligence

Although they felt that the study was limited by the small sample size, they observed that 'Most of the competencies appear to be non-technical' (p274) indicating gaps in the current development of academic physicians. The framework therefore provided a solid basis for bridging these gaps.

This particular model was customised to the context of the particular medical centre where the research took place. They collected data from physicians at a range of levels thus enabling them to model the competencies required 'across the years and across the different and changing roles of academic physicians' (p275)

Transferable learning

This framework is interesting as it acknowledged different roles within the framework, and the different competencies needed for each. It may be that this is a useful model which recognises the distinct legal roles performed by solicitors in Ireland.
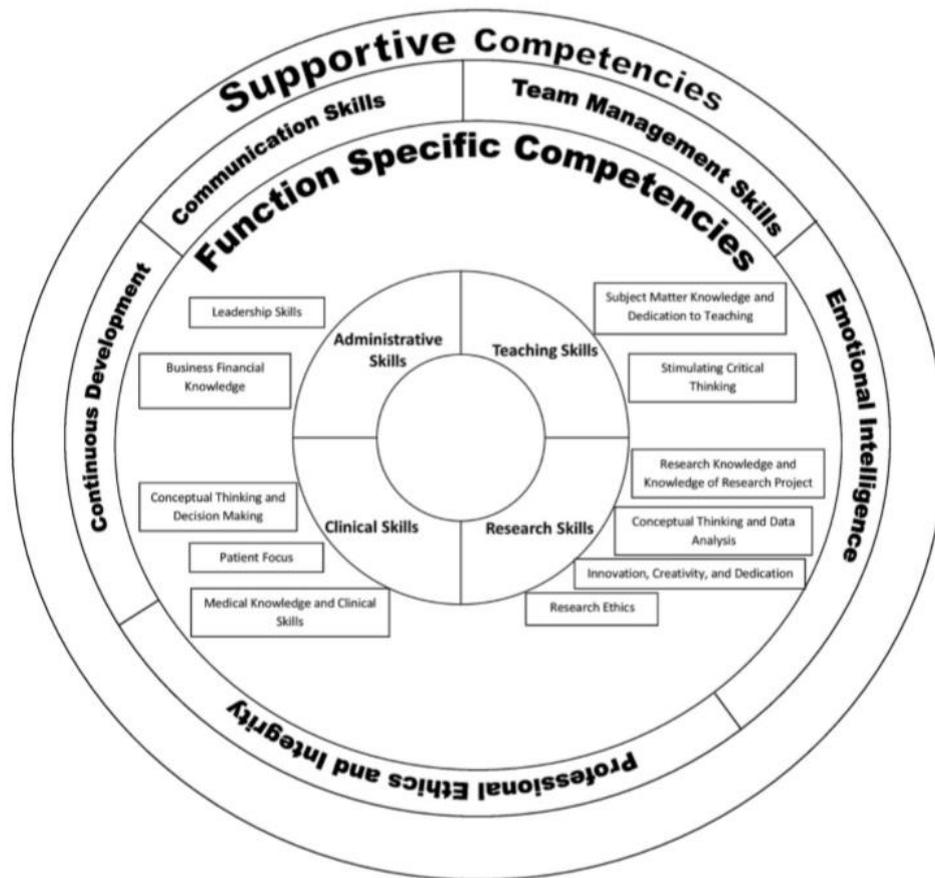
Figure 1. Competency framework for academic physicians.

Competency framework methods for Mental Health Professionals

Troller et al, in 2017 developed a Competency Framework for mental health professionals in Australia.

Method

The methods used were: 'A multi-phase, multi-method design was used to collect qualitative and quantitative data, including a scoping survey, modified online Delphi, and consultation with multiple stakeholders. The implementation phase involved a launch forum and workshop, toolkit development, and evaluation strategy.' (p237)

> 'Consulting with multiple stakeholders, not just experts, elicited new information that may otherwise have been overlooked.' (p237)

Result was a core competency framework with 11 domains. An accompanying toolkit was also developed with practical guidance to assist with the implementation of the core competencies.

They expected the competency framework to have an impact on education and training, workforce planning, recruitment and retention, career development, worker wellbeing.

They cited the lack of detailed competencies for each profession as being a weakness as they had taken a 'whole of workforce' approach:

'current best practice acknowledges that people with lived experience know the system and can provide suggestions for improvements'. (p238)

Transferable learning

This experience is helpful as it provides useful advice in relation to the launch of a competency framework (e.g. toolkits, webinar); it also advocates involving consumers of the system (see also BMG below), which suggests there would be some benefit to consulting with clients. It also draws attention to the tension between specialist and generalist Competency Frameworks, and the fact that both probably have value.

Criteria and standards of proficiency of Health and Social Care Professionals in Ireland[38]

The regulatory body for Health and Social Care Professionals in Ireland (CORU) was set up under the Health and Social Care Professionals Act 2004 and comprises a Health and Social Care Professionals Council and Registration Boards, one for each profession named in the Act. Twelve are already regulated by CORU, with a further six in line to enter CORU regulation. Amongst other duties, CORU establishes the standards that professionals must meet, maintains and updates a Register of competent practitioners for each profession, ensures that the relevant educational bodies deliver qualifications that prepare professionals to provide safe and appropriate care, and ensure that registered professionals keep their skills up to date by promoting continuing professional development.[39]

The Registration Boards are key to the overall public protection strategy. Each Board sets out criteria for education and training programmes; and each states threshold standards of proficiency on knowledge and skills that all graduates must possess at entry to the relevant profession's Register.

There are at least two points to note about this strategy. First, CORU plays the role of oversight and monitoring of the performance of the separate Registration Boards, thus ensuring standards of performance. Second, the devolution of responsibility to the health or care domain of the Registration Boards means that each has the required space and freedom to develop their own health and care competence frameworks, with associated documentation, so long as the over-arching or meta-objectives of CORU as regards health and care standards are met by the Boards.

The development of Competency Frameworks in the legal profession

In this section we describe four approaches to the development of competency frameworks in the legal profession. They give us examples that can be contrasted to the medical competency approaches above and reveal the range and variety of models of competency-building. Above all, they demonstrate that knowing in advance how the competency model will be used in practice powerfully affects the method of construction and the framework itself.

Competency framework methods for Solicitors

In their substantial report BMG (2014) set out the development of a Competency Framework for solicitors in England & Wales.

Method

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[38] See https://coru.ie/
[39] See https://coru.ie/about-us/what-is-coru/what-is-coru-.html

- 78 in-depth interviews with legal practitioners, legal educators, and individual and business consumers of legal services. 'These insights were not in themselves sufficient to constitute, collectively, a coherent and systematic Competency Statement' (p8)

- These findings informed a programme of workshops attended by a range of practicing legal professionals and legal educators as well as by SRA representatives. 'The workshops iteratively developed a draft Competency Statement, being informed along the way not only by the outputs of the qualitative research phase but also by the advice of a consultant with specialist expertise in defining competencies and by a 'Delphi' group (a further set of senior legal practitioners and specialists who, independently of each other, commented on drafts of the Statement as they were produced).'

- The draft Competency Statement produced through this process has 18 main competencies, divided into 4 areas. Each main competency has a set of further, more specific, competencies which, together, constitute the main competencies. The main competencies are:

A. Ethics, professionalism and judgement

1. Acting in accordance with legal and regulatory requirements and the SRA Codes of Conduct
2. Maintaining sufficient competence and legal knowledge to practise effectively
3. Working within the limits of their knowledge, competence and available supervision
4. Drawing on both an awareness of a broad base of legal knowledge and sufficient detailed knowledge and understanding of their field(s) of work and context in order to practise effectively
5. Applying understanding, critical thinking and analysis to solve problems

B. Technical legal practice

1. Undertaking legal research
2. Undertaking factual research
3. Developing, communicating and advising on options, strategies and solutions
4. Drafting documents which are legally accurate and effective
5. Undertaking effective spoken and written advocacy
6. Negotiating solutions to the client's issues
7. Planning, managing and progressing legal matters and transactions

C. Managing self and own work

1. Initiating, planning, prioritising and managing work activities and projects to ensure that they are completed on time and to an appropriate standard, both in relation to their own work and work that they lead or supervise
2. Keeping, using and maintaining accurate, complete and clear records
3. Applying good business practice

D. Working with other people

1. Communicating clearly and effectively, orally and in writing
2. Establishing and maintaining effective and professional relations with clients
3. Establishing and maintaining effective and professional relations with others

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This draft Competency Statement was then tested on 3 groups (legal practitioners, individual consumers and business consumers) through a survey.

Respondents were asked:

- to rate each of the different elements of the draft Competency Statement for the importance of its elements to being a competent solicitor (using a 10-point scale).

- if each element had omissions and/or needed amendments or clarifications and, if so, to add comments.

- to give two summary ratings of the Statement – of its overall adequacy and of the ease with which it could be understood

- to add further comments, if they wished, to explain the first of these two ratings.

Practitioners were also asked for each element of the survey, to rate the importance of each element to their own personal practice of law on a daily basis.

The results were presented as the % of respondents giving ratings of between 8 and 10 as to the importance of the competencies.

Some issues raised by respondents were:

- Whether a single Statement can usefully be developed and applied if it does not have variations which allow for particular areas of practice and different career stages.

- That the Statement, perhaps partly because it has been developed to be profession-wide, may simply be a 'statement of the obvious' which may, by inference, have limited power to drive standards because it can simply be 'taken as read'.

Transferable learning

This research report is very comprehensive and provides a clear description of the pitfalls of developing a Competency Framework for the law. However, as with the medical examples above, the SRA is a regulator and the Framework was designed with regulation in mind. The LSFS framework is to serve a different purpose.

Competency frameworks for future lawyers: England

By contrast, Nigel Spencer, writing in 2019 (Spencer, 2019) was not developing a competency framework but was estimating the skills that future lawyers would need. 'A career will no longer be periods of 'education' – 'work' – 'retirement'. Instead, it will be more a pattern of 'education' – 'initial role/career' – 'education'/re-tooling for next role – 'education'/re-tooling for subsequent role.'

He sets out some of the competencies which he feels will be necessary for a future lawyer.

The 'Poly-technic' professional: becoming the 'Many-skilled' advisor of the future

Mind-set
- Curious – and continuous learners
- Embraces ambiguity and change
- Seeing opportunities – not only risks
- Exploring new identities and roles
- Learns by doing

Skill-sets
- Strategic, long-term thinking
- Acute commercial awareness
- Data aware – but not coders
- Helping clients manage change
- Predicting future industry trends
- Posing great questions – not 'giving answers'
- Bringing diverse thought to complex challenges
- Building collaborative teams around client problems
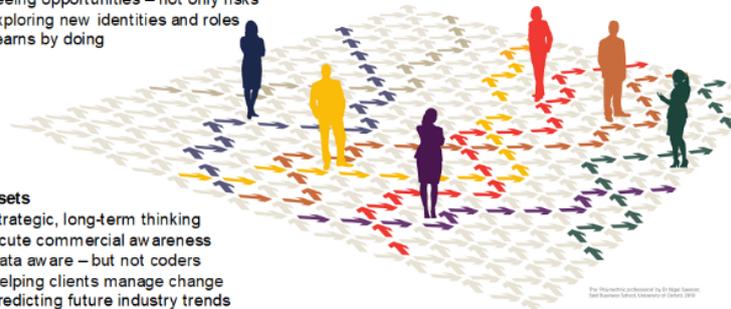
Source: Nigel Spencer, Saïd Business School: Strategic Learning & Development in Professional Services – 2019

Competency framework for US business lawyers

This article, Defining the key competencies for business lawyers (2016) refers to the development of a competency framework for business lawyers in the US which was developed by an ABA Task Force in 2013. It draws heavily on the 1992 MacCrate Report.

Method

The Task Force created the Competency Framework which was then sent out for broad consultation. The article was a 'call to arms' to obtain input into the competencies from a broader group of stakeholders.

The Task Force divided competencies into:

(i)   skills that may be mastered before or outside of law school, such as familiarity with business terminology and concepts, or use of technology

(ii)   skills that are often taught in law school, such as interviewing, contract drafting, and negotiation

(iii)   those skills that are usually mastered only after several years of law practice, such as overseeing all legal aspects of a major transaction.

Although the Task Force was confined to business law, they sought to develop competencies that were relevant to all types of practice. They split competencies among skills, knowledge and behavioural competencies (MacCrate focused on skills and values). The Task Force was also developing a framework 'to classify which of the identified competencies are most important, in what types of legal employment contexts they would be most applicable, and at what levels of training they may be best taught or learned.' Their aim was to 'provide assistance in defining competencies as a first step in identifying and assessing learning outcomes and skill development'.

The article references: 'finders' (those who were good at the people skills needed in identifying and developing new clients), 'minders' (those who made sure the clients were getting the right level of client service day in and day out, who focused on cross-marketing within the firm and on feedback and client relations), and 'grinders' (the lawyers who were subject matter experts, who 'ground out' the work product, but might not necessarily be invited to wine and dine the clients):

> 'at every stage of their careers, [in some firms], lawyers are expected to bring the full menu of finder-minder-grinder skillsets to the table. For the lawyer entering practice, this puts added pressure on them to develop a full set of competencies.' (p101)

Task Force competencies were:

- Problem solving

- Legal analysis and critical thinking

- Working with legal materials and research

- Factual investigation

- Communication

- Counselling

- Negotiation

- Dispute resolution

- Organisation and management of legal work

- Recognising and resolving legal dilemmas

The article referenced:

- Work in the USA from 2011 by Marjorie Schultz and Sheldon Zedeck that identified twenty-six lawyer-effectiveness factors divided into eight umbrella categories. (This is a major piece of empirical work cited in many difference contexts.)

- Work by the Institute for the Advancement of the American Legal System which identified 147 foundations for practice grouped in three broad categories of characteristics, professional competencies, and legal skills, which were broken further into fifteen categories. This very considerable work deserves to be better known than it is, but for our purposes in this project the methods and study are too complex to give useful comparators.

- Work by Law Admissions Consultative Committee in Australia (LACC) that set out competency standards for entry-level lawyers which provided a comprehensive series of competencies by practice area. These standards included several categories of general competencies applicable to all lawyers, including ethics and professional responsibility, problem solving, work management, and business skills. They then break out additional subject-matter-specific competencies for twelve specific practice areas, from family law to criminal law to banking and finance.

Transferable learning

This article is useful in setting out the pros and cons of specialist as opposed to universal Competency Frameworks. It also provides an example of very centralised competency development and a broad untargeted consultation approach.

Competency framework for Family Legal Services Provider Licence

This initiative arose from the Family Law Working Group of the Law Society of Ontario (2020). Working with the Access to Justice Committee of the Law Society the Group set out the case for a new employment category, a Family Legal Services Provider. The model outlined a proposed scope of permissible activities, competencies and training requirements. Starting with a powerful case based upon unmet legal need, the document sets out in considerable detail the construction of the new legal post.

Method

As summarised on p.4 of the consultation paper, the method employed to construct the licence framework comprised the following method:

1. Meeting with approximately 100 family law practitioners, family law clerks, paralegals, mediators, court staff workers, intermediaries, and others to gain insight into the opportunities and limitations of an FLSP licence.

2. Retaining subject matter experts to develop a preliminary mapping of activities for the FLSP.

3. Convening multiple working groups led by psychometricians and consisting of family law lawyers, paralegals, and law clerks, as well as representatives from Legal Aid Ontario and the Ministry of the Attorney General, to develop, revise, and critically analyse the proposed permissible activities and supporting competencies.

4. Several rounds of internal Law Society consultation and policy discussion that involved the Access to Justice Committee, other benchers, and senior Law Society staff to finalize the framework for external consultation.

From this, a total of 209 competencies across eight areas was developed by psychometricians, subject matter expert family law practitioners, and educators. A detailed list of competencies for the FLSP licence can be found at Appendix C in the document.

Transferable learning

This is an interesting methodology for LSFS, for the competencies were clearly part of the wider initiative to improve access to justice within the area of family law. For that reason, the competencies were constructed to carve out the responsibilities of the new Provider, and to define not only the Providers' competency but the Providers' *incompetency* i.e. those areas that they would not be competent to practise within. There is thus a subtle change of meaning in the term 'competency', approaching more of a jurisdictional concept.

The FLSP licence gives LSFS an interesting model of how a competency framework can be constructed, and why. The whole initiative envisages the competency framework as part of an ethical initiative, and also an educative initiative. The final part of the consultation opens up to educational providers as the following paragraph makes clear:

> The competencies form the foundation for the FLSP training program and the accompanying assessment regime. The proposed training program is informed by the Law Society's

paralegal education framework and has been supported by an environmental scan of family law education programs for law students, law clerks, family lawyers, and others.

In this sense the consultation document forms a coherent and intelligent whole, where the competency framework exists in a future context of use by practitioners and educators.

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3. Thematic Summary of Literature on Ireland, England & Wales, Canada and Australia

Competency Statements for lawyers in Ireland

Ching, J, Crewe, J, & Maharg, P. (2018)[40].

The report was commissioned by the Law Society of Ireland (LSI) to analyze the system of solicitor education in Ireland and provide recommendations for improvement. The review compared solicitor education structures and content in other jurisdictions and drew on best practices in other professions, such as medicine and accountancy, to inform recommendations.

Semi-structured interviews were completed with 29 stakeholders in Irish solicitor education to inform the analysis and recommendations in the report. Five broad questions were asked about legal education in Ireland covering the topics of the legal services market, the profession's wishes for legal education, how education should develop to meet the challenges of the profession, relation of Irish solicitor qualifications to those in the European Union and elsewhere, and implications for the profession of the Irish *Legal Services Regulation Act 2015*. Interviewees were selected by the LSI to represent a range of viewpoints. The sample was not random or representative. Interviewees performed one or more of the following legal roles:

- Members of regulatory bodies for legal professions in Ireland;
- Legal educators in the Republic and in Northern Ireland;
- Senior solicitors in private practice;
- Senior solicitors in in-house practice;
- Trainee solicitors.

The report outlines ideal structures and teaching methods for Irish solicitor education. However, the report also contains information touching on the issue of competencies for Irish solicitors both directly and indirectly.

Statements on What Lawyers Need to Know in the Future

- Report authors note that a certain degree of availability of legal services in the Irish language is required by legislation which compels LSI to consider Irish language courses
- Stuart Gilhooly's address to the IBA Bar Leaders Conference in May 2017 noted that Brexit will create demands for competencies in international trade law, cross border regulation, and a knowledge of the post-Brexit UK regime, as well as other languages to facilitate international legal work

- International Bar Association report identified skills lawyers needed for future practice (page 168):
  - ➢ Interpersonal and interdisciplinary skills
  - ➢ Commercial skills
  - ➢ Competitive advantage of being literate in technology
  - ➢ Communication skills
  - ➢ Management skills
  - ➢ Adaptability to change

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[40] Solicitor education in Ireland: Review report.
https://pdfs.semanticscholar.org/deb9/8b445a23c6d7d93b01bd5cd6b51888d4562b.pdf

- International law (necessary competency as is geographic shift of power and business globally from west and north to east and south)
- Online employability

- Interviewees identified possible new areas of knowledge and skill for Irish solicitors to emphasize in light of current social, political, and economic trends:
  - Increased ability to engage with international and civil law to work with European countries after Brexit
  - Trademarks and patent law might become more significant after Brexit
  - Knowledge of aviation, mediation, arbitration, leadership, managing own firm/understanding business, research, negotiation, use of social media
  - Ability to engage with regulatory or corporate crime finance frameworks, asset management, financial services, Fintech, money laundering, and immigration
  - Shift to in-house practice requires skills for this specific practice area

- One interviewee suggested the LSI should stop training new lawyers in legal tasks that will soon be automated

- When asked to identify competencies Irish solicitors require, the following list was generated by consolidating feedback of all interviewees (page 73):
  - Business law should be a higher starting point, given that it has been tested on the entrance exam to the LSI education
  - Communication skills.
  - Conveyancing (this interviewee felt standards had slipped)
  - Drafting and presentation are very important (interviewee constantly hears people complaining about low standards
  - Due diligence and corporate transactions
  - Employment and family law need to be more integrated
  - English language skills– ability to write/draft clearly and unambiguously
  - Applied Land Law does not have to look exclusively at residential conveyancing and could have a more corporate angle.
  - Teamworking
  - Technological proficiency – one interviewee notes on page 170 that young lawyers are technologically proficient generally but may not necessarily know how to use the more complex and niche systems in use in legal practice and in the administration of justice – for example, don't know how to handle meta data on Facebook in professional context
  - What a modern business economy is dealing with even in a small practice

- Similar list was generated when interviewees were asked what skills new lawyers should be taught by the LSI, suggesting there are some recurring themes regarding entry level competencies (page 144):
  - Arranging/negotiating contracts with other jurisdictions
  - Business development skills
  - Communication skills
  - Emotional intelligence
  - Interacting with clients and fellow solicitors properly
  - International trade
  - Interpersonal skills/psychology of client relations/how to deal with an angry client.
  - Language skills
  - Management skills – leadership, HR training, how to handle people
  - Negotiation, including negotiation skills in a different language

- Practical legal research (one interviewee on page 142 expressed surprise at the high level of competency in legal research skills of trainee solicitors)
- Project management skills
- Representing people with a vulnerability or mental health issues.
- Social media skills
- Team working
- Technological skills

- Several suggestions arose among Interviewees for Changing LSI New Solicitor Training
  - More training about interacting with clients and fellow solicitors properly
  - More information on ethics and regulation
  - More time needed on negotiation, interviewing, drafting, and writing

Relationship Between Competency and Continuing Professional Development (CPD)

- Authors note that CPD schemes for legal practitioners often include mandatory coverage of ethics and regulatory matters as does the LSI's CPD model
- Authors note there is a trend in legal CPD generally away from an inputs model towards a competency-based model
- Inputs: complete a specific number of hours
- Competency-based: develop learning plan to maintain or enhance competencies in the competency statement created by the regulator relevant to the individual's practice
- Interviewees had mixed opinions on the competency-based system in England and Wales compared to the outputs system in Ireland
- Some interviewees liked the reflective approach and tailoring CPD to be relevant to learning needs, while others thought the input requirement was necessary to ensure people would actually complete CPD
- Flaw of the input model identified by interviewees that for some solicitors it is just an exercise in ticking a box that a requirement has been met – interviewees noted some solicitors do genuinely want to learn and improve through the inputs model
- Interviewees suggested a few topics to include in CPD:
  - Cyber security/coding
  - Juvenile justice (suggested as something that required specific accreditation)
  - Management skills – leadership, HR training, how to handle people
  - Regulatory crime (potentially also relevant entry level knowledge)
  - Areas which will be more relevant in the post-Brexit era

Recurring Themes about Solicitor Competencies and Education among Interviewees

- Avoid copying the changes to legal education and regulation that have occurred in England and Wales
- LSI training should be more skills based – is an issue that has arisen in the past as well
- Lack of unanimity about required skills – all interviewees did not identify the same set of skills and knowledge needed by lawyers in the future
  - Example: some say LSI education for new lawyers is too driven by needs of large commercial firms that provide the most training contracts for students while others say the curriculum caters to small private practices and does not meet the needs of large commercial firms
  - Example: debates re: if education should be more generalist or specialized

Recommendations of Authors Relevant to Solicitor Competencies

- Increase clarity of outcomes: LSI needs to improve communication regarding outcomes LSI education for trainee solicitors is intended to achieve and to what standards – lack of clarity adversely impacts trainees developing required skills at LSI and in the training work placement
- Shift to outcome focus: Is generally a shift in education and regulation of professions from delivery standards to learning outcome standards that speak to what is achieved – LSI should embrace this shift while addressing the flaw with this approach that the standard to which the activity to be achieved is often not clear
- Increase consistency of practice standards: Is lack of consistency in what practitioners think the standard of performance should be at the end of LSI training and trainee work placements – achieving consistency of standards is challenging, but the issue needs to be tackled
- Incorporate generalist and specialist training: Design LSI curriculum for trainees around a core of professionalism, values, attitudes, skills and knowledge for the entire profession which will thread through the Professional Practice I segment that occurs before workplace training and offer more specialist skill development in the Professional Practice II segment that occurs after some workplace training has been completed
- Create outcomes/standards targeted to practice areas: Develop learning outcomes and standards that apply to the varieties of segmentations of the legal profession in Ireland, and that give choice and options to trainees – outcomes and standards should reflect a variety of different forms of practice, including public law, regional and rural practice, in-house practice, financial services regulation, IP, etc. Standards should map learning outcomes to assessments of trainees
- Shift from degree verification to competency verification: Instead of relying upon the usual academic categories of Certificate and Diploma to document learning, use badges to break down the certification of these titles into competency- or outcomes-based learning. Students would download a digital version of their degree certificate to smartphones, while also receiving a paper transcript. Such certificates could be used to verify highly granular competency in transactional work (e.g. the successful completion of a conveyancing or a litigation in a particular court)
- Teach writing skills for various contexts: In light of rapid technological change in communication platforms, teach trainees writing skills across a wide range of contexts and social situations – LSI should also develop a statement on an interactive and engaged model of digital legal literacy for all solicitors
- Regularly engage stakeholders to review required skill set: Liaison should take place with representatives of the profession to establish the required skill-set for the next 5-10 years using Delphi and other processes. Such liaison could be a regular process, taking place at least every decade, so that the process is more cumulative, building on earlier events, and thus easier to embed in the process of curricular change

Ching, J, Crewe, J, & Maharg, P. (2018)[41].

This document is a companion to the report summarized above. The report above is analytical while this report is largely descriptive. This document summarizes how solicitor training is structured and delivered historically in Ireland while making some international comparisons, including comparisons

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[41] Solicitor education in Ireland: A comparative analysis. http://paulmaharg.com/wp-content/uploads/2019/07/Comparative-analysis-24012018.pdf

with other professions. There are a few comments about necessary skills and knowledge for solicitors in Ireland, and the use of competencies by the Solicitors Regulation Authority (SRA) in England and Wales, as well as several comments about competency frameworks developed for professions generally, that are useful for informing the development of a competency framework for Irish solicitors.

Comments about Required Knowledge and Skills of Irish Solicitors

- Page 19: A 2007 review of solicitor training concluded that the Law Society of Ireland's (LSI) courses for trainee solicitors should remain consciously generalist and reflect the generality of a solicitor's licence.
- Page 35: LSI's trainee curriculum is deliberately designed to represent a generic form of practice with only a few specialization opportunities in the final stage of trainee classroom education – therefore, standards of practice in specialized fields are developed through the workplace, continuing professional development (CPD), reading, consultation with specialist networks, additional professional accreditation (such as mediation certification), and specialist diplomas and degrees – is likely informal knowledge among solicitors about courses, activities, qualifications, and texts most useful for developing adequate professional standards in specialist areas
- Page 51: A survey about CPD among 150 firms of solicitors in Ireland conducted in 2001 by McGuire, Garavan, and O'Donnell indicated that solicitors wanted core management and personal skills development from CPD rather than specific legal knowledge and/or skills development. Management skills were prioritised as the most important CPD area, with only one specific legal expertise area ranked in the top five priorities.
- Page 177: This report provides a more detailed overview than the companion report by these authors summarized above regarding the legislative impetus for including the Irish language as a required subject in the trainee curriculum offered by the LSI. An obligation to ensure Irish proficiency in the legal profession first appeared in the *Legal Practitioners (Qualification) Act*, 1929. The *Official Languages Act* 2003 required public bodies (including universities, the Courts Service, the Land Registry and Legal Aid Board) to be bilingual. The *Legal Practitioners (Irish Language) Act* 2008 obligated the LSI to ensure that an adequate number of solicitors are competent to practice in the Irish language. The 2008 Act mandates that trainees at the LSI take a non-examined course in Irish legal terminology and the understanding of legal texts in Irish. All trainees are expected to know enough Irish after taking the course to be able to identify and refer an Irish-speaking client to a solicitor who can assist the client in Irish. The LSI is also mandated to offer an advanced Irish course to trainees and to others (who may or may not be solicitors). Successful graduates of the advanced course are listed on a register of solicitors competent in Irish. The *Official Languages (Amendment) Bill* 2017 proposed increased court sittings in Irish and replacement of public sector language schemes with language standards.

Praise and criticism of SRA Competencies

- Page 40: Competency statements with an external, activity-based approach, focussing on tasks, may limit their ability to reflect the complexities of ethical or problem-solving attributes. The SRA competency statement is an attempt to use a broader and less activity-based model.
- Page 139: The SRA developed a competency statement to benchmark the qualification of applicants seeking to be licensed as solicitors. However, the competencies have only been explicitly assessed with international lawyers seeking licensure who must complete the Qualified Lawyers Transfer Scheme (QLTS). The competencies relating to 'intellectual, analytical and problem-solving skills' and 'personal development and work management

skills' are not assessed on the QLTS because they are assumed of all qualified lawyers, even if applicants have qualified as lawyers elsewhere without any work experience.

Comments about Competency Frameworks Generally

How legal education is designed
- Page 35: Legal education can be designed through either a bottom-up or top-down approach
  - ➢ Bottom up: legal educators leave it to workplace training to each any skills that are lacking for competent practice after formal legal education – sometimes a new practice issue will emerge, and it will be mandated for the curriculum due to pressure from students, employers, and academics
  - ➢ Top down: Key skills, knowledge, attitude, or competencies required for 'day one' practice are identified and education is built to equip students with those competencies

Definitions of competency

Page 37: Definitions related to competency in legal practice predominantly used among regulators internationally:
  - ➢ 'standard:' quality of legal services provided by a solicitor-- excellent, competent or negligent
  - ➢ 'competency:' minimum level of performance that is acceptable and not negligent
- Page 37: The movement internationally towards assessable competency statements in law has been criticized by some scholars as mechanistic and reductionist
- Page 38: Most competency statements in law establish day one competency only – layered competency statements that speak to competency after licensure are rare
- Page 38: It is difficult to develop a threshold for competency – what is adequate, master, and manager level of competency?
- Page 38: Challenging to assess competency – some necessary attributes can be difficult to assess in an objective way, such as competencies that must be demonstrated over time (for example, maintaining a client relationship)
- Page 39: Challenging to define a generic level of competency in law due to the wide variety of practice contexts – for example, in small firms, need to handle client relationships immediately upon licensure, whereas new associates in large firms probably will not manage client files for years
- Page 39: Miller's model from 1990 of progressing from knowledge to expert in the medical profession offers a different definition of competency than the definition prominent in legal regulation cited on page 37. Miller proposes that trainees progress through the stages of knowing (knowledge), knowing how (competency), showing how (performance), and doing (action). Competency/knowing how involves collection of information, its analysis and translation into diagnosis or treatment. Showing how/performance is achieved by performing such a process of collection, analysis and solution in answer to a problem scenario in a professional assessment. Doing/action represents how the individual actually performs in the real-life practice context and could have a number of levels, as one can 'do' negligently, competently, or expertly – trainee education at LSI is at Miller's 'performance' level, and employers in workplace training and early years of practice in Ireland assess Miller's 'doing' level.
- Page 40: Another alternate definition of competency noted by McKee & Eraut in 2013: 'ability to perform the tasks and roles required to the expected standard' – this definition captures both quality and scope

- Page 40: Element of capability (ability to be flexible and to change) should be included in competency statements so that the statement does not imply that solicitors will know everything they need to know for their entire careers on day one
- Page 40: Are different ways competency statements are developed internationally: drafted by a consultant, arrived at through Delphi groups within the profession, and or through empirical study, such as Canadian study asking lawyers how often each element of a draft competency statement was performed and the consequences of incompetency with that element – infrequent tasks were retained on the statement if consequences of incompetency were high risk
- Page 40: Scope of competency statements: because they represent minimum performance level, scope of the tasks must be such that they can be demanded of every single member of the profession at the point of licensure
- Pages 43-44: Definition of expertise: ability to recognize patterns in a problem, evaluate a wide range of factors and apply a wide repertoire of solutions – expertise is developed from practice and specialization – expertise is related to the evolving learning captured by the term 'capability' rather than the static knowledge associated with the term 'competency'
- Page 44: Specialization narrows the scope of activity and thus could be viewed as a decrease in competency unless the competency statement reflects that specialization is a subset of a set of competencies designed for the point of qualification as a solicitor

Relationship between CPD and competency

- Page 44: Competency statements for day one practice may not include competencies related to business management which might only be needed years after licensure
- Page 44: If CPD focuses only on updates in the law, there is a disconnect between formal education processes and the standards of performance required for the new expectations around management that evolve as solicitors become more experienced – learning standards for management is then supported informally and experientially in the workplace instead of through formal education
- Page 50: Definitions of CPD for legal practitioners are not consistent across jurisdictions, but generally engage the notion of learning after licensure to maintain a minimal level of competency which is equated with offering quality legal services. Occasionally, CPD definitions mention progressing beyond competency, such as moving into new areas of practice.

Relationship between competencies and workplace training

- Page 131: Clear statements of the outcomes and competencies that should be achieved during workplace training could help trainees negotiate the types of experiences they want and need to learn solicitor work, especially if the statements of outcomes and competencies have contractual status. However, there is no guarantee that statements of outcomes and competencies would have that desired effect of increasing learning opportunities during workplace training.

International trends in legal education towards competencies

- Pages 219-220: Trends in the content of legal education programs offered internationally in both civil and common law countries are noted.
  - Limited range of knowledge areas prescribed as topics, outcomes, or competency statements from the regulator outlining entry level competency for the profession
  - Use of competency models is increasing
  - Variation in subject areas covered relates primarily to including/excluding business, family, and employment law

- ➢ Evidence and ethics may be included in training more consciously oriented towards practice
- ➢ Skills training focuses on drafting, research, advocacy, interviewing/conferencing, and negotiation, emphasized in varying proportions
- ➢ Client care, and practice and office management skills, are often included in legal education if graduates can enter independent practice soon after licensure
- ➢ Alternative dispute resolution training is sometimes compulsory
- ➢ Risk management is covered in varying degrees
- ➢ Not clear if mandatory knowledge and skills requirements in training are current with models of practice (in-house and outsourcing)
- ➢ Not clear to what extent law of technology is covered or if trainees learn to use the kinds of technology that are used in legal practice, such as e-disclosure

Law Society of Ireland. (2018)[42].
The Law Society convened an expert group chaired by Mr. Justice Michael Peart of the Court of Appeal of Ireland to establish a vision for the future of solicitor training in Ireland. The Law Society's report arising from the Peart Commission's work makes 30 recommendations for solicitor training. The report was provided to the Legal Services Regulatory Authority in response to the Authority's consultation about training arrangements for Irish legal practitioners.

The report does not explicitly list a competency framework for Irish solicitors. However, there are a few direct statements about areas of competency the Law Society's law school currently teaches trainee solicitors and plans to add to its training in 2020. There are also a few implied statements about required competencies in some of the information about the current curriculum at the Law Society's law school and some of the recommendations for the future of solicitor training.

Direct Statements about Competency

- Page 4: The tasks assigned to solicitors in legislation combined, with the system of allowing solicitors to practice independently upon completing qualification as a solicitor, necessitate that solicitors are competent in conveyancing, probate, and litigation from the date of qualification as solicitors. New solicitors must also be competent to run a solicitor's practice and have a good knowledge of ethical, practice and financial rules applicable to solicitors.
- Pages 4-5: Training currently provided by the Law Society's law school aims to teach trainee solicitors the following skills to ensure they are competent:
  - ➢ Adapt to ongoing changes and legal developments in common areas of practice;
  - ➢ Identify needs of clients in more common areas of law;
  - ➢ Communicate clearly with clients;
  - ➢ Appreciate the ethical standards that govern solicitor work;
  - ➢ Develop non-legal skills that impact the ability to be a competent solicitor: emotional competencies and business development skills.
- Page 28: Solicitor training will be adapted by the Law Society to incorporate competencies that have been identified by research as necessary skills for children to excel in 21st century society. This research has been adopted by various reputable organizations, including the Irish education system for children. The competencies the Law Society will emphasize in

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[42] Submission to the Legal Services Regulatory Authority as part of a public consultation prior to a report to the Minister for Justice and Equality on the education and training arrangements in the state for legal practitioners.
https://www.lawsociety.ie/globalassets/documents/lsra/peart-commission-report-2018.pdf

future solicitor training based on this research with children are knowledge management, leadership, adaptability, project management, relationships with clients (leadership, authority, delegation), and digital literacy (securing office data and systems, good practice in document construction and revision, e-Filing, e-Conveyancing, artificial intelligence).

- Pages 32, 35-36: Trainees must pass an examination to gain entry to the Law Society's law school that ensures knowledge of academic law in eight subject areas: Company Law, Constitutional Law, Law of Contract, Criminal Law, European Union Law, Equity, Real Property, and Law of Tort. This examination will be continued by the Law Society because it allows the Society to ensure that all applicants coming from various degree programs have the same level of knowledge when they commence solicitor training. There is a co-relation between success on the entrance examination and success in the Law Society's Professional Practice Course (PPC), suggesting that the entrance examination ensures that solicitor trainees are competent in core areas of law.

- Page 45: PPC will be revised to focus on core areas of knowledge all solicitors must know:
  - ❖ Applied Land Law;
  - ❖ Probate;
  - ❖ Business Law;
  - ❖ Dispute Resolution (including Civil Litigation and Alternative Dispute Resolution);
  - ❖ Family Law;
  - ❖ Professional Practice Conduct and Management (pages 135-136 indicate that current Professional Practice Conduct and Management content is psychology of the lawyer, accounting practices, client billing, bill of costs, solicitors' accounts regulations, cybersecurity, communication within the law firm, branding, business plan, changes to the profession and the legal services market, complaints procedures, and dealing with clients, third parties, colleagues, and court);
  - ❖ Lawyering Skills Modules (page 72 indicates current skills modules are civil and criminal advocacy, interviewing and advising, legal research, legal presentation skills, legal writing and drafting, negotiation and professional development);
  - ❖ More Legal Ethics Training;
  - ❖ Legal Practice Irish;
  - ❖ English and Welsh Property Law;
  - ❖ Digital Literacy Content (discussed on page 28).
  - ❖ NOTE: Criminal litigation and employment law will no longer be included in the PPC

- Page 50: A dedicated centre for innovation, education, and learning will be created by the Law Society to achieve several objectives, one of which is to integrate entrepreneurship, leadership skills development, leading-edge technology, emotional competencies, and optimal psychological/emotional development opportunities for trainees alongside traditional legal subject and legal skills development into Law Society educational offerings. Training must attend to the whole person of the solicitor.

- Pages 58-59: Law Society must ensure that in addition to legal knowledge, trainee solicitors possess competencies required for 21st century society, namely creativity and innovation, critical thinking and problem solving, communication and collaboration. Additional capacities such as leadership, technology and entrepreneurship, as well as a breadth of knowledge of other industries/disciplines outside of legal profession/law, will be needed to equip solicitors to compete successfully with other professions.

Implied Statements about Competency

- Pages 13-14: Business law module of the PPC provided by the Law Society teaches drafting skills and the ability to identify commercial issues if and when they arise in practice

- Page 42: Legal practitioners trained in certain jurisdictions who wish to become licensed as solicitors in Ireland must complete a Qualified Lawyers Transfer Test (QLTT). The QLTT addresses Constitutional Law and Criminal Law or Company Law (at the option of the candidate), Contract and Tort, Land Law and Conveyancing, Probate and Taxation, Solicitors' Accounts and European Union Law. There is also an oral examination in Professional Conduct. The QLTT will not be changed in future other than converting the Professional Conduct examination to a written format aligned to the Professional Conduct content in the PPC.
- Page 59: In addition to the traditional twin pillars of legal skills and legal modules, all trainees at the Law Society now participate in a third pillar: psychology of professionalism. *Shrink Me; Psychology of a lawyer* is a range of lectures and workshops offered by mental health professionals during the PPC.
- Page 70: In office training must provide experience in Conveyancing and Landlord and Tenant Law and Litigation

Hook Tangaza. (2018)[43].

The Legal Services Regulatory Authority (LSRA) of Ireland contracted research company Hook Tangaza to assemble a team of consultants to complete an independent review of legal practitioner education and training in Ireland. The team reviewed information received from 730 entities (individuals or organizations) through written submissions, phone interviews, on-line surveys, and a consumer opinion poll to inform its recommendations. Input was received from students attending university hoping to enter the training process to become a legal practitioner, legal practitioner trainees, employers of trainees, recently qualified practitioners, experienced practitioners, university professors, various legal organizations, such as the Law Society and the Association of Judges, various non-legal agencies, such as a consumer association, and the public. Feedback was specifically sought from practitioners who are in-house counsel because this group is growing in number in Ireland, and prospective legal practitioner trainees indicated a preference for in-house counsel work.

The report summarizes the current process to become a solicitor:
- Pass an entrance exam to the Law Society (individuals who have not taken an approved law degree must pass an additional exam before the entrance exam covering English, Irish Government and Politics, and General Knowledge);
- Obtain a training contract with a solicitor;
- Complete the 6-month Professional Practice Course I (PPC I) provided by the Law Society and pass the associated examinations – goal of PPC I is to cover the basic knowledge and skills that any solicitor in general practice would be expected to possess;
- Attend 11 months of office training with a solicitor;
- Complete PPC II for eleven weeks which offers trainees the opportunity to gain more in-depth understanding of areas in which they want to specialise;
- Complete 10 months of office training with a solicitor.

The report notes that Irish barristers must practice for three years before the Law Society will consider allowing them to practice as a solicitor. Barristers must work in the office of a solicitor for 6

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[43] Review of legal practitioner education and training.
https://www.lsra.ie/wp-content/uploads/2019/09/Review-of-Legal-Practitioner-Education-and-Training-Final-version.pdf

months and complete the Law Society's Essentials of Legal Practice course (ELPC) in order to qualify to practice as a solicitor. The ELPC covers Professional Conduct, Solicitors' Accounts, Probate, Taxation, and Conveyancing.

The report identifies six design principles for an education system for legal practitioners and evaluates the current solicitor and barrister training systems against those principles. Three of the design principles relate to competencies, and are discussed below. The current solicitor training system does not perform well as regards any of the three principles related to competencies.

Principle 1

Competencies required of a legal practitioner and the standards to which these should be demonstrated are defined, with particular attention to the knowledge and skills needed for the effective exercise of reserved activities and the expectations of society of an individual holding a reserved title, such as 'solicitor.' Competencies have two dimensions: they define the activities, attributes and skills which a legal practitioner would be expected to be able to perform and they define the standard to which those individuals would be expected to perform, thus giving some indication of the quality of performance expected. Competencies can be set at different levels, such as competencies for a new solicitor compared to a senior practitioner.

Performance of current solicitor training system: There is considerable uncertainty in the legal sector and in wider society about what a solicitor should be able to do, and to what level of competency. Syllabi for Law Society courses are not derived from statements of what a competent solicitor should be able to do, and to what standard, and simply list topics covered. The lack of statements of competency and performance standards for solicitors creates several challenges:
> - trainees' prior learning cannot be credited by the Law Society, leading to unnecessary duplication of testing of trainees during their university studies and in entrance examinations to the Law Society;
> - continuing professional development is a tick-box approach with a focus on hours of input rather than learning to enhance competency with the exception of the Law Society requiring certain learning for managers;
> - a system for the accreditation of potential new legal training providers cannot be easily created;
> - simple and streamlined processes cannot be created for individuals within Ireland to transfer from barrister to solicitor practice, and for legal practitioners trained outside Ireland to obtain certification to practice in Ireland.

Principle 2

Training arrangements exist which enable legal practitioners to obtain the required competencies, at the appropriate level, for a newly qualified practitioner. Legal practitioner training should be designed to support the exercise of a profession; the training involved should build the skills required for practice and simulate practical, real-world experiences.

Performance of current solicitor training system: There is a mismatch of the skills taught in the solicitor qualification courses with the needs of the users of solicitors' services in a modern solicitor practice. The teaching is not innovative and is inconsistent in quality. Current training does not focus enough on skills. There should be a stronger link between office training with a solicitor and the Law Society training in developing competency.

Principle 3

Systems for accrediting training programmes and systems of assessment exist which are appropriate, transparent, robust and fair. These should provide assurance that the required competencies for practice are being delivered and have been achieved.

<u>Performance of current solicitor training system</u>: Concerns emerged from some stakeholders about the transparency of assessment systems used by the Law Society for the entrance examination and the PPC examinations. There were also concerns about inadequate assessment of competency of key legal skills of writing, drafting, and research. The Law Society is not subject to a formal external accreditation framework. The Law Society does not accredit continuous professional development training offered by other entities to ensure a certain standard of quality and a meaningful link to enhancing competency are attained.

The report recommends 14 changes to the training system for solicitors and barristers. The development of a clear definition of competencies, and the standards required to practice as a solicitor and barrister in relation to those competencies, is the first recommendation and is the foundation of many of the other recommendations. The statement of competencies, and the standards of behaviour required to practice in relation to those competencies, would be the basis of multiple forms of information (delineated below with reference to solicitors but also applied to barristers in the report):

- Criteria for admission to solicitor training programs;
- Standards trainee solicitors must meet to be qualified to practice;
- Capabilities clients can expect from their solicitors;
- Performance expectations transferable across different areas of law within solicitor practice, thereby supporting generalist and specialist practice;
- Behaviour required in different roles or levels of practice (such as associate versus manager in a law firm);
- Appropriate standards of behaviour and triggers for disciplinary action against solicitors;
- Activities and knowledge required from practicing solicitors to ensure ongoing competency;
- Outcomes legal education programs must deliver to maintain their accreditation or receive initial accreditation to provide solicitor training and education;
- Skills and knowledge that Irish barristers, and solicitors trained abroad, must demonstrate to qualify to practice as a solicitor in Ireland;
- Benchmark solicitor competencies in Ireland against national and international qualifications frameworks for solicitors.

The report sets out a couple of considerations for developing a competency statement:

- Use the same template for barrister and solicitor statements so they can be cross-referenced as appropriate;
- Allow the regulators of solicitors and barristers to develop drafts of competency statements that can be circulated by the LSRA for consultation;
- Initially develop a statement based on requirements for admission to the profession and later add details, such as indicators of progression with experience;
- Ensure the competency statements and associated standards meet needs of all stakeholders;
- Distinguish between topics and competencies (the report alleges that the Law Society considers its entrance examination a test of competencies when it is actually a test of topics).

The report notes that one of the benefits of basing qualification to become a legal practitioner on a competency framework is that there can be multiple routes to obtain the knowledge and skill

required to meet the competencies. However, the report also acknowledges that quality assurance for legal services will suffer if providers of legal training are not adhering to the same standards when assessing that the competencies have been met. For this reason, the report recommends that different providers of legal training use the same assessment methodology to ensure consistency, reliability, and fairness when determining if legal practitioner candidates meet the competencies and standards required.

Hall, E., Hodgson, J., Strevens, C., & Guth, J. (2019)[44].

The authors critique recent developments in legal training reform in England, Wales, and Ireland. The critique related to England and Wales focuses on the pilot test of the Solicitors Qualifying Examination (SQE) under development by the Solicitors Regulation Authority (SRA). The critique focuses on the need for increased transparency about the pilot test and concerns that the construction of the test does not actually measure legal knowledge and skill. This part of the article is not summarized further because the focus is examination design rather than identifying competencies. However, the portion of the article about reforms in Ireland is summarized in detail because that part of the article directly relates to the design of competency frameworks for solicitors.

The authors critique the report prepared by Hook Tangaza for the Legal Services Regulatory Authority (LSRA) in Ireland proposing multiple reforms to the system of education and training for legal practitioners in Ireland grounded in development of a competency statement. The authors recommend that the LSRA re-examine the data gathered by Hook Tangaza without reference to the analytical framework used by Hook Tangaza to assess the data because the framework used is 'very flimsy' for six reasons.

Principles are not evidence based

The authors question the principles used as the basis for evaluating the system of education and training for legal practitioners by Hook Tangaza because they are not evidence based. The principles have not been 'developed and tested in the crucible of practice, using detailed empirical analysis of systems and processes in education.'

Hook Tangaza cites little authority for the principles used in the report to the LSRA. There are only six citations in total to support the analytical framework used in the report, none of which are empirical or theoretical studies of legal education. The citations are primarily European Union documents about proportionality of competencies and restricting entry to professions. Only one of the six citations is an academic reference: an edited book by Anne McKee and Michael Eraut entitled *Learning Trajectories, Innovation and Identity for Professional Development*, published by Springer in 2012.

Hook Tangaza cites McKee and Eraut's book for the proposition that competencies are the gold standard of education systems.   The article's authors note that some educational theorists favour the pre-eminence of competencies but McKee and Eraut are not part of that group. According to the article's authors, McKee and Eraut advocate for a holistic understanding of the learning process informed by multiple trajectories, including the cognitive and affective traits of the learner.

Competency frameworks are only one of many trajectories informing the use of knowledge. The article's authors note that McKee and Eraut are critical of competencies for three reasons: over-simplistic use, lack of conceptual clarity, and façade of objectivity (competencies are socially and contextually judged).

Stilted definition of quality

The article's authors note that Hook Tangaza defines an education system's fitness for purpose in terms of effectiveness and efficiency and neglects to include the dimensions of quality of an education system of exception, perfection and transformation. Exception is distinctiveness, while perfection is specifying how quality is to be sought in every part of a process. Transformation refers to a system's success with enhancing the cognitive and personal growth of students and empowering the students.

Oversimplifies complex relationship between training and practice

The article's authors state that Hook Tangaza's report makes vague assertions denying the complex relationship between training and practice failures of legal practitioners. The authors claim that Hook Tangaza uses the same rhetoric to justify its proposals to reform legal training in Ireland as was used by the Solicitors Regulation Authority (SRA) in England and Wales to justify imposing a qualifying exam for licensing as a solicitor: public safety and the rule of law are under threat from poorly trained solicitors. The article's authors note that neither Hook Tangaza nor the SRA have provided data demonstrating the portion of practice problems linking back to training compared to those linking to burnout or immorality to justify their proposed reforms.

Lack of evidence to support overtraining concern

The article's authors note that Hook Tangaza's report is concerned with avoiding overtraining of legal practitioners. The article's authors indicate that there is no empirical data identifying the level of legal training that is excessive. They note that overtraining is a highly context specific issue and cannot even be reliably identified through the reflections of practitioners regarding which aspects of their training they do not rely on in practice because such reflections are influenced by the norms of their present performance.

Dissatisfaction with legal training is overstated

Hook Tangaza's report states that legal practitioners are dissatisfied with the training they received. The article's authors assert that the level of dissatisfaction is exaggerated because data are not provided about the number of law students who drop out of training or the number of people who do not apply to the training due to dissatisfaction with the training.

Misguided concern with offering more opportunities for training

The article's authors note that Hook Tangaza's report expresses concern with opening up more opportunities for people to train for the legal professions from multiple training providers. They argue that this concern ignores the structural reality that the oversupply of law graduates compared to the number of law jobs available is a greater barrier to entry to the profession than the structure and availability of the training process.

Brennan, G. (2020)[45].

The author is a solicitor and professor at the law school operated by the Law Society of Ireland. The article discusses four proposed reforms to training legal practitioners raised by the Legal Services Regulatory Authority at a symposium in September 2019 arising from the Authority's review of the Hook Tangaza report. One of the themes is using a competency framework to determine admission to professional programs in law.

The author acknowledges a few advantages of competency frameworks before describing multiple concerns with such frameworks. A competency framework facilitates learners in achieving their learning objectives, provides a means of comparing different learning programs, and provides a benchmark for quality assurance. However, a competency framework mandated for educational institutions training legal practitioners could interfere with academic freedom and creativity in teaching. Requiring applicants to solicitor training at the Law Society to meet a competency framework to gain admission to solicitor training could decrease the diversity of the profession by impeding access for applicants who did not take law degrees. A competency framework could have so much latitude in its implementation that it does not effectively measure quality assurance but could also be so restrictive it becomes devoid of real meaning.

The author cites specific examples of the use of competency frameworks to demonstrate that these frameworks cannot be the sole basis to ensure sufficient learning. Competency frameworks are a fixed part of curriculum design in the form of learning outcomes but educators do not unanimously support competency frameworks because these frameworks emphasize outcome at the expense of the learning process. The author cites a critique of competency-based training in the medical profession to argue that competency-based education focuses on individual skills at the expense of the overall learning experience. Sacrificing the overall learning experience impedes the development of holistic professionals with mastery of the affective domain of practice.

The author references the adoption of a competency-based training process by the Solicitors Regulation Authority (SRA) in England and Wales as evidence that competency frameworks should not be used to determine admission to the legal professions. The SRA implemented a competency framework to impose a consistent standard of quality on people entering the solicitor profession from multiple diverse education programs. However, the SRA found the competency framework was not sufficiently robust to confirm competency, so is implementing a qualifying exam. The author notes that the creation of the SRA removed the monopoly of the solicitor profession in determining admission to the profession but the SRA's qualifying exam is reinstituting a monopoly approach. The monopoly created by a qualifying exam was necessitated by the inadequacy of a competency framework to determine competency.

Another theme in the article relates indirectly to competency frameworks. The author disagrees with proposals to create specialist designations for solicitors for three reasons. Forcing specialization during solicitor training would sacrifice a strong grounding in the core principles of legal practice. Solicitors would be less adaptable to changing market conditions if they must specialize in a particular area of practice during training. Finally, the broad training solicitors receive in Ireland enables them to practice independently upon completing the qualification process to become a solicitor because they understand the interconnections among all areas of law. Conversely, new solicitors in England and Wales are restricted from independent practice for three

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years after completing the qualification process. The author links this restriction to specialization in training in those jurisdictions preventing new solicitors from developing the broad base of knowledge needed to practice independently.

The author ends the article by noting that discussions about reforming credentialing of Irish solicitors began years ago and tended to recommend English solutions. The author asserts that the Irish path of reform should not be unique and not based on processes from elsewhere.

Allbon, E. (2016)[46].

The author discusses the competency statement for legal research developed by the British and Irish Association of Law Librarians (BIALL). The competency statement arose from a BIALL meeting in June 2011 at which librarians in law firms complained about the appalling research skills of trainee legal practitioners. A working group of the BIALL was created to follow up these concerns and generated a Legal Information Literacy Statement (LILS).   The LILS is a competency statement of legal research skills for academic and professional contexts.

The LILS lists five broad research skills:
1. Demonstrate an understanding of the need for the thorough investigation of all relevant factual and legal issues involved in a research task
2. Demonstrate the ability to undertake systematic comprehensive legal research
3. Demonstrate the ability to analyse research findings effectively
4. Demonstrate the ability to present the results of research in an appropriate and effective manner
5. Continuing Professional Development – refreshing the legal research skills required of a modern lawyer.

The LILS breaks down these five broad skills into learning outcomes with the knowledge, understanding, and skills required in a separate column. The LILS also includes indicators of ability. The article's author recommends embedding the skills in the LILS in all activities at law schools to ensure law students develop these skills. The author also encourages regulators of the legal profession to incorporate the LILS into their standards.

Choolhun, N & Bird, R. (2012)[47].

The article provides an overview of the process whereby the BIALL developed its Legal Information Literacy Statement (LILS). Law firm and barristers' chamber librarians based in practice in England and Wales were interviewed to inform the development of the LILS. Academic librarians were not included in the survey because the inspiration for the project was a librarian in a law firm noting the poor research skills of trainee legal practitioners. The response rate to the survey was high, so the results were representative of law librarians in the commercial legal sector.

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[46] Seeing is believing: We are all converging. *The Law Teacher*. *50*(1), 44-60. https://doi.org/10.1080/03069400.2016.1146455

[47] British and Irish Association of Law Librarians (BIALL) Legal Information Literacy Statement. *Journal of Information Literacy. 6*(2), 132-134. https://ojs.lboro.ac.uk/JIL/article/view/PRJ-V6-I2-2012-2

The BIALL determined that the LILS should have a checklist format and be applicable in all settings where legal research occurs. The BIALL used the American Law Student Information Literacy Standards as their initial starting point in drafting the LILS. The BIALL then analyzed core documents of the relevant regulatory and training bodies in the United Kingdom. Analysing these documents for content, duplication and overlap, revealed that there was a common core of expectations and requirements that constitute mastery of legal research. These core expectations could be adapted to work with accepted information literacy concepts, and would also be relevant to the digital literacy skills required in the modern world.

The LILS was launched in August 2012. BIALL has received positive feedback about the statement. Law firms indicated that they will use the statement to revise in-house training materials about legal research.

British and Irish Association of Law Librarians. (2012)[48].

Behavioural indicators are listed for each bullet under each skill:

Skill #1:
- Demonstrate an understanding of the need for the thorough investigation of all relevant factual and legal issues
- Determine the scope and objectives of the research
- Identify the legal context(s) and pinpoint the legal issues
- Determine whether non-law information is also required

Skill #2:

- Demonstrate the ability to undertake systematic and comprehensive legal research
- Demonstrate the ability to create a research strategy appropriate to researching the problem at hand
- Determine which legal resources are most appropriate for the problem at hand. Reference to both print and online sources as necessary
- Formulate lists of search terms
- Identify and find relevant case law
- Identify and find relevant legislation

Skill #3:

- Demonstrate the ability to analyse research findings effectively
- Demonstrate the ability to compare new knowledge with prior knowledge
- Identify the legal context(s) and pinpoint the legal issues
- Demonstrate the ability to choose the right method of searching online and critically evaluate the information found

Skill #4:

- Demonstrate the ability to present the results of research in an appropriate and effective manner

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[48] Legal information literacy statement. https://biall.org.uk/careers/biall-legal-information-literacy-statement/https://biall.org.uk/careers/biall-legal-information-literacy-statement/

- Organise, structure and compile a written response for the problem researched and present the results of the investigation to the intended audience
- Provide clear advice, conclusions and identify courses of further action
- Demonstrate awareness of ethics and legality of information use

Skill #5:

- Continuing Professional Development – refreshing the legal research skills required of a modern lawyer
- Refresh and update legal research knowledge as part of career development

Grealy, F. (2018)[49].

The author discusses a 10-week experimental course in legal ethics and lawyering skills that the author designed for trainee solicitors at the Law Society of Ireland (LSI). The course was delivered through online and in person sessions in the form of seminars, small group discussions, and practical exercises, such as standardized client interviews. The course had several different facilitators, including legal experts from other countries, because there was no expertise within Ireland on the course topics of ethical and moral theory in the context of law, communication skills in law, and standardized client methodology.

The course design was based on the Four Components Model of moral behaviour and development in the literature on professional ethics. The model outlines four competencies that must be developed to engage consciously and consistently in a pattern of behaviour one's peers would judge as moral/ethical:
- moral sensitivity (capacity to interpret ambiguous clues in real life settings);
- moral judgment (capacity to analyze moral issues and provide justifications for decisions);
- moral motivation and identity (beliefs and understanding of professional role concepts);
- moral character/implementation (interpersonal and communication skills, teamwork, negotiation, clinical).

Data collection methods: pre- and post-test measures of these four competencies, interim and final feedback questionnaires about the course, posts on discussion forum for the course, formal evaluation methods used in the course (journal article reviews and career plan), interviews, and focus group. Pre- and post-test measures used to test four competencies:
- moral sensitivity – role ethics measurement test developed by the author;
- moral judgment – Defining Issues Test 2 researched by the Center for the Study of Ethical Development in the United States;
- moral motivation and identity – professional essay identity assignment devised by the author;
- moral character/implementation – standardized role play developed a solicitor at the LSI who prosecutes solicitors for breaches under the *Solicitors Acts*.

Data analysis technique: grounded theory – a coding process wherein the data emerging from transcripts is organized according to evidence of repeated themes.

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[49] Experiential training for real-life professional impact: the formation of professional identity in trainee solicitors through a discrete intervention course on ethics and lawyering skills. *The Law Teacher*, *52*(3), 295-315. https://doi.org/10.1080/03069400.2017.1415079

Selection of participants: The 423 students enrolled in the Professional Practice II Program at the LSI were invited to take the course. Twenty-one students volunteered. Participants were given a certificate for completing the course but could not count it as one of their electives for the Professional Practice II Program.

Profile of participants: 81% female (60% of all solicitor trainees are female);
- many had worked in another capacity in law for several years before training as a solicitor;
- included trainees in small town practices and those in large commercial firms in Dublin.

Findings:
- trainees enjoyed talking to each other about their experiences – they realized no traineeship is ideal and they learned a lot from each other about dealing with challenging situations
- trainees had not thought much about professional identity before the course
- trainees appreciated the approach in this course of focusing on day-to-day application of ethics in practice instead of codes and rules as occurred in other courses at the LSI
- trainees appreciated the time allotted for discussion and self-reflection about ethics, moral, and professional identity that gave them space and time to think about issues on which they had not reflected in depth previously
- the favourite part of the course for over a third of trainees was the 'Putting Ethics into Practice' workshop in which they met with tutors in groups of five and teased out issues in a non-judgmental atmosphere based on discussion questions the trainees received in advance
- trainees appreciated the opportunity to reflect on the journey of becoming a solicitor
- course facilitated knowledge gain in ethics and morality plus an increased awareness of the importance of ethical identity among trainees
- trainees came to see the centrality of ethics and morality in negotiating their professional identity, and were motivated to inform themselves and develop ethically

Implications for Future Training of Solicitors:
- Results suggest professional formation of solicitor trainees can be assessed and trainees are capable of moral development
- Blended learning format (role play, small group discussion, online discussion forum, standardized client interviews, use of domain experts both local and international, journal article reviews, continuous assessment throughout the course) is effective in prompting trainee solicitors to engage in moral discourse and inquire into what it is to be a
lawyer, and in prompting them to consider what kinds of lawyer they want to be

Hession, R. (2019)[50].

The author is an employee of the Law Society of Ireland (LSI). The author reports a study conducted by the author that explores the definition of professionalism and methods for teaching professionalism to solicitor trainees at the LSI.

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[50] Professionalism in the legal profession – can you teach it? A phenomenographic study of Irish legal stakeholders' perceptions. *The Law Teacher*, *53*(3), 245-262. https://doi.org/10.1080/03069400.2018.1503519

Data collection method: face to face semi-structured interviews using open-ended descriptive questions as prompts. Analytical approach: phenomenography -- analyzing aspects of professionalism for which there are variations in experience.

Participants:
- 6 tutors at the LSI, all of whom but one were practising solicitors;
- 6 trainee solicitors at various stages of traineeship;
- 6 solicitors in firms that hire trainees;
- 4 LSI executive staff who develop education for trainees.

Findings: participants defined professionalism in four different ways:

Values: Professionalism is based on ethics, values and autonomy
- Professionalism is having a moral compass and adhering to a code of conduct
- This definition is common among organizations that regulate legal practitioners

Behaviour: Professionalism is behaviour based
- Professionalism is a way of presenting oneself with clients and colleagues: appropriate dress, hygiene, and mannerisms
- Literature on professionalism refers to this perspective as learning professional courtesies and possessing upright character, proper work habits, and genuine good manners

Client Management: Professionalism is about managing clients
- Professionalism is doing the best job possible for clients
- Literature on professionalism mentions empathy, compassion, loyalty and zealous advocacy but does not discuss the themes arising in this study of managing the client or being at the client's 'beck and call'

Competency: Professionalism is based on competency and efficiency
- Professionalism is competency: well-organized and efficient with attention to detail, knowledgeable, and adept at interacting with clients and colleagues
- Literature on professionalism often references competency and efficacy in legal services

The main variations in defining professionalism among participants were as follows:
- LSI staff and tutors focused on abstract notions of values and ethics (definition #1), while solicitors and trainees focused on the technical and practical components (definitions #2-#4);
- Solicitors from large firms emphasized personal presentation (definition #2);
- Experienced and trainee solicitors held opposite views about client expectations associated with definition #3: experienced solicitors said professionalism is managing clients' expectations, and trainees said professionalism is constant availability to clients.

These variations in definition among participants suggest that trainee solicitors obtain a different understanding of professionalism depending on their instructor. A common definition of professionalism is necessary to ensure all trainees learn the same standard of conduct.

Participants also varied in their approaches to teaching professionalism. They articulated four different teaching methods, two of which are directive, while the last two are non-directive.

1. Professionalism can be taught explicitly in a didactic manner
   - Participants with this view had a technical definition of professionalism related to specific behaviour rather than a values definition
   - There are conflicting views in the literature on professionalism regarding whether or not professionalism based on values can be taught explicitly
   - Participants did not comment on the method of teaching that should be employed although the literature discusses group work as an option to teach professionalism and LSI training emphasizes group work
   - Participants espoused the idea in the literature on professionalism that teaching of professionalism should pervade the curriculum rather than be a standalone subject
   - Literature from the medical profession states that professionalism must be taught explicitly so the meaning of the concept is clear but this idea was not popular in the study

2. Only the basic underlying/guiding principles of professionalism can be taught explicitly
   - Guiding principles not identified but participants thought LSI should teach principles
   - The literature on professionalism, unlike interviewees, does not distinguish between explicit teaching of the concept as a whole and the teaching of basic principles

3. Nurturing professionalism is implicit
   - Participants alluded to simulation methods of teaching professionalism discussed in the professionalism literature in which models of behaviour in the simulation are discussed
   - LSI has avoided the problem identified in the literature about over-reliance on experiential teaching of professionalism leading to students failing to identify the underlying concepts because the LSI teaches the underlying principles in lectures and then applies them by discussing specific scenarios in tutorials

4. Role modelling is required to instil professionalism
   - All participants agreed with the literature on professionalism that role modelling is necessary to teach professionalism and can occur effectively during workplace training
   - Interviewees were also consistent with the literature on professionalism by identifying LSI instructors and fellow solicitor trainees as role models
   - There are mixed views in the literature about whether or not exposure to negative role models assists with learning professionalism but trainee and solicitor interviewees believed negative role models were helpful for learning how not to behave
   - Participants reflected the mixed view in the literature about whether or not role modelling must be structured with mentors explicitly identifying professional behaviour
   - Participants were consistent with the literature by viewing role modelling as necessary but not sufficient to teach professionalism – interviewees endorsed at least one other teaching approach besides modelling

LSI executive staff were out of sync with everyone else in their preferred teaching approaches. The LSI staff emphasized learning approaches #3 and #4, while other participants generally embraced all learning approaches except #3. The embrace of non-directive approaches to learning professionalism by LSI executive staff is inconsistent with the curriculum they developed for trainees featuring lectures on professionalism. The observation by LSI staff about the importance of the hidden curriculum for role modelling was unique to them. The differences in opinion among participants about the value of the four teaching approaches indicates the need for a collaborative and coordinated approach to teaching professionalism.

Excerpts from the website of the Law Society of Ireland

A search of the website of the Law Society of Ireland (LSI) generated four pieces of information relevant to competencies of practitioners as outlined below.

- Article on pages 26 and 29 of the July 2017 *Law Society Gazette* written by Raymond J. Friel, School of Law, University of Limerick, entitled 'Get Smart!' states that a new lawyer needs to be 'a problem-solver capable of working collaboratively in international multidisciplinary teams who understands risk analysis and project management' to deal with the modern realities of practicing law with downward pressure on legal fees and a global dimension to problems (https://www.lawsociety.ie/globalassets/documents/gazette/gazette-pdfs/gazette-2017/july-2017-gazette.pdf)

- Post on website dated May 5, 2017 reminding conveyancing solicitors that they are not trained and do not have competency to certify construction costs, this being a job which quantity surveyors, engineers and/or architects are trained to do, and they should therefore not give such confirmations to lenders (https://www.lawsociety.ie/Solicitors/Practising/Practice-Notes/Confirmation-of-construction-costs/#.XqXOuGhKjIU)

- Fit for Law online course was profiled in a post dated January 30, 2020 on the LSI website (https://www.lawsociety.ie/News/News/Stories/are-you-fit-for-law/#.XqXdbGhKjIU) – Fit for Law is online interactive 2-4 hour module on the LSI's website – module was developed based on evidence from focus groups with legal professionals across Ireland and the United Kingdom
  - ➢ Fit for Law intended to help legal practitioners develop emotional competency – this competency is about how we understand and handle our emotions, and identify and interpret emotional responses around us
  - ➢ Key emotional competencies include self-awareness, self-reflection and better strategies for emotional self-regulation

- Posting on competency-based job interviews provides an overview of different competencies sought by employers (https://www.lawsociety.ie/legalvacancies/Tips-Insights/Jobseeking-tips/Competency-Based-Interviews/#.XqXN3WhKjIU):
  - ➢ Personal competencies evaluate your individual attributes
  - ➢ Managerial competencies look at how well you deal with responsibility and your supervisory control
  - ➢ Analytical competencies usually revolve around your decision-making abilities
  - ➢ Social competencies look at your interpersonal skills, looking at how well you function in a team and how well you get on with your colleagues
  - ➢ Motivational competencies focus on the things that drive and motivate you

Competency Statement for lawyers in England and Wales

Legal Education and Training Review. (2012)[51].

This document reviews literature and reports from the past decade about skills, knowledge, and experience prescribed for legal professionals, client responses to legal professionals, and complaints against legal professionals to create a benchmark in preparation for a field investigation into competencies in the legal professions in England and Wales.

Timeframe for Competency Development

The report focuses on competencies required at point of qualification and after qualification for the legal professions because regulators of the legal professions use this distinction. The authors note that a more useful division may be before and after the point in time that new professionals first see clients. This point in time is much more diffuse because trainees may see clients while providing volunteer work long before qualification or may not see clients until after qualification if no supervised workplace training is required for licensure.

Nature of Competencies

Competencies involve two issues: scope and quality of performance. Scope is the range of knowledge, skills, or tasks a professional is licensed to perform. The scope may be broad and engage many tasks, as with a generalist solicitor, or narrow engaging only a very few specialized tasks, as with a licensed conveyancer. Quality of performance may be captured by issues such as the efficiency and intuitiveness with which a task is completed and the ability to acknowledge a wider range of variables. Expertise literature generally indicates that 8-10 years of practice is required to develop expertise in a field. It is possible to be both a novice and expert simultaneously if an attorney ventures into a new area of work, such as management of the firm, after many years as a fee earner taking the same types of cases.

Scope and quality of performance cannot be equated with experience. Experience refers to an individual's exposure to certain tasks or areas of activity over a period of time and does not necessarily reflect scope or quality of performance. Professional licensure schemes may be based on experience rather than competency (scope and quality of performance).

There is a risk that focusing on discrete skills can sacrifice attention to important overarching concepts, such as professionalism. Lists of skills must be used in a way that they do not become reductivist and atomistic and sacrifice fundamental concepts.

Focus of the Analysis of Competency Frameworks

Rutter's work from 1961 distinguished between underlying generic 'skills' and individual, task-based operations, such as cross-examination.   Rutter used two major categories of skills in his courses on appellate advocacy, facts and drafting:

> i) Fact management – specific tasks include linguistic analysis and avoidance of inappropriate legalese; and,
> ii) Application of doctrine – specific tasks include decompartmentalizing legal topics and acquiring sufficient understanding of a new area of law on short notice and under pressure.
> Other than Rutter's work, the authors gathered a convenience sample of competency frameworks from around the world for different legal professionals created by a variety of

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[51] Briefing paper 01/2012: Knowledge, skills and attitudes required for practice at present: Initial analysis. http://www.letr.org.uk/wp-content/uploads/012012-competency-frameworks-analysis.pdf

organizations, including regulators, professional associations, and large law firms during the past ten years. Focus was on frameworks used to define practice rather than educational learning outcomes or graduate attributes. The authors hoped to identify common elements in the documents reviewed but not to create a generic competency framework for legal services.

Themes in Competency Frameworks

- Not all frameworks used the same terminology, degree of detail, or delineation of topics
- Not always apparent which level of performance was deemed appropriate for qualification
- List was created of skills, knowledge, and personal attributes in legal services
- Desirability of the behaviours listed will depend on context – for example, empathy for a client is positive as long as it does not impede professional independence and integrity
- Importance of different parts of taxonomy may vary from profession to profession and may change in future (for example, due to impact of technology on practice)
- Knowledge:
  - General and specialist knowledge and procedures
  - Conduct rules/discipline rules/liability/insurance
  - Own organization
  - Client's organization
  - Legal services sector
  - Own profession
  - Advertising/publicity rules
  - Administrative processes
  - Complaints/client handling protocol
  - IT
  - Diversity policy/issues
- Skills:
  - Problem solving
  - Dealing with ethical issues
  - Legal research
  - Case management/progress files
  - Interviewing/conference
  - Advocacy
  - Negotiation
  - Writing and drafting
  - Communicating
  - Client relationships
  - Personal organization
  - Working with others
  - Teaching and learning
  - Personal management
  - Risk management
- Personal Attributes:
  - awareness of danger of 'mismanagement of living and work practices
  - resilience/perseverance/ability to deal with difficult issues
  - cope under pressure/with emotional issues
  - courtesy
  - fosters team morale and spirit
  - objectivity

- ➢ sense of proportion/pragmatism/common sense
- ➢ values/ethics/honesty/professionalism
- ➢ integrity
- ➢ independence/objectivity
- ➢ acts on own initiative/self-starting/proactive
- ➢ ability to see bigger picture
- ➢ attention to detail
- ➢ energy/focus/enthusiasm
- ➢ works outside own comfort zone
- ➢ deals flexibly with interruptions
- ➢ takes ownership/responsibility/reliability
- ➢ adapts to change/new practices/new law/improvements in
- ➢ technology
- ➢ commerciality/public service standards;
- ➢ initiate and progress tasks/see project through
- ➢ well-groomed/presented
- ➢ recognises reputational risk and behaves accordingly
- ➢ take responsibility
- ➢ take resources into account
- ➢ avoid waste

Themes in Literature on Consumer Feedback in the United Kingdom (UK)

Vulnerable Client/Legal Advice Sector
- • Discrete skills appear to be needed:
  - ➢ Counsel clients in their own language
  - ➢ Recognize the consequences of a problem for a client, such as stress
  - ➢ Refer clients effectively between advice agencies
  - ➢ Address barriers, such as gender and mental health
  - ➢ Manage challenging and aggressive clients
  - ➢ Emotionally accessible
  - ➢ Non-judgmental
  - ➢ Keep promises, such as a commitment to report back on progress on an issue
  - ➢ Allow clients to tell their story
  - ➢ Identify multiple interlinked issues impacting their clients and advise on those issues or refer them to appropriate agencies to address those issues
  - ➢ Gaps in the skills required of legal advice professionals: subject specific legal training, legal knowledge, giving advice/counselling skills, supervision skills, communication skills, finance, using computers and other technology, leadership, fundraising (not for profit organizations) and experience (private practice only)

Corporate Clients
- • Corporate clients want the following attributes from their legal professionals:
  - ➢ specialist legal expertise (extent overestimated by lawyers)
  - ➢ understanding the client's industry (extent over-estimated by lawyers)
  - ➢ cutting-edge thinking (extent underestimated by lawyers)
  - ➢ ability to address immediate needs
- • Attributes valued by lawyers in the lawyer/client relationship:
  - ➢ Ability to solve problems quickly (considerably underestimated by lawyers)
  - ➢ Knowledge and understanding of the client's business needs
  - ➢ Trust
  - ➢ Frequent communication (overestimated by lawyers)

- ➢ Transparency and openness
- ➢ Consistency in meeting the client's expectations (overestimated by the lawyers)
- ➢ Ability to anticipate the client's needs (overestimated by the lawyers)
- ➢ Willingness to become embedded in the client's business (overestimated by lawyers)
- ➢ Long-term focus
- Corporate clients also expect their lawyers to be capable of sophisticated use of technology

Themes in Complaints about Legal Professions in the UK

- Data about complaints may skew the impression of the prevalence of competency problems among legal professionals because larger groups (such as solicitors) will be subject to more complaints than other groups by virtue of their numbers and issues with in-house counsel may be addressed within the organization rather than through reporting to an external agency
- Records of complaints and redress in some areas of law may be incomplete because the processes involved in instigating a complaint are too confusing for clients to pursue or the complaints systems are too varied and complex to provide a coherent picture
- First Annual Report of the UK legal ombudsman in 2011 gives some insight into complaints:
  - ➢ Failure to advise
  - ➢ Failure to follow up
  - ➢ Delay
  - ➢ Excessive costs
  - ➢ Failure to keep informed
  - ➢ Failure to progress
  - ➢ Costs information deficient
  - ➢ Conduct
  - ➢ Failure to investigate
  - ➢ Failure to keep papers safe
  - ➢ Other
- YouGov report into first tier complaints handling in 2011 identified the following issues:
  - ➢ Delay
  - ➢ Excessive costs
  - ➢ Failure to keep informed
  - ➢ Poor quality of service
  - ➢ Mistakes made
  - ➢ Advisor did not seem to ….
  - ➢ I wasn't treated very …..
  - ➢ Legal advice wrong
  - ➢ Dealt with by a more ….
  - ➢ Other
- YouGov identified the following deficiencies when investigating the complaints:
  - ➢ lack of understanding of the case
  - ➢ lack of communication
  - ➢ lack of transparency
  - ➢ not achieving the initial objective
  - ➢ not being treated as a human being
  - ➢ a build-up of small mistakes
  - ➢ legal professionals' superiority complex

Necessary Competencies Suggested by Consumer Reports and Complaints

- Empathy, respect, communication should be part of generic competency framework for legal professionals in all fields and levels

Competency Frameworks for Post-Qualification

- Review of available competency frameworks internationally for the period after licensure suggests assumption of greater autonomy over time and that senior legal professionals should move into leadership roles and handle marketing, finances, diversity, policy, and strategy for the organization
- A greater range is expected over time in responsibility, creativity, risk-taking, and innovation in problem solving
- Legal professionals over time are expected to have a greater external presence, either as experts, or positive role models and representatives of their organizations, or engage with media and government
- Trend away from formal skills, such as legal research, to tactical and strategic activities where technical expertise, risk taking and responsibility are demanded

Challenges in Developing Competency Frameworks for Qualification and Post-Qualification

- Describing with precision what 'safe' practice looks like upon qualification
- How competency should be handled after qualification – are different options:
  - Assessed formally only to establish a new credential
  - Re-accreditation required periodically at qualification level of competency
  - Expectation of progressing competency after licensure even if does not lead to new credential
- Ensuring the framework is not full of competencies that are culturally associated with certain groups, such as the association of women with empathy

SRA Statements on Competencies and Associated Literature

Solicitors Regulation Authority. (2014, October 20)[52].

The SRA is the organization that regulates licensure of solicitors in England and Wales. The SRA developed a competency statement with three parts and requested feedback on the draft documents. The three parts collectively establish the skills and knowledge that solicitors must possess upon licensure and on an ongoing basis. The *Statement of Legal Knowledge* focuses on the knowledge that solicitors must possess upon qualification and on an ongoing basis to the extent their practice engages these areas after licensure. The *Statement of Solicitor Competency* outlines the activities that solicitors must be able to perform. The *Threshold Standard* indicates the level to which the competencies in the *Statement of Solicitor Competency* must be performed.

Goals of the Competency Statement

- respond to LETR report which called for a greater focus on standards required of solicitors both at qualification and subsequently to address concerns about inconsistency upon qualification and inflexibility in options for achieving qualification
- adopt a new approach to identifying education needs of solicitors – move from focus on process of delivering education (specified academic and vocational training and mandatory continuing professional development (CPD) hours) to focus on standards expected of solicitors on qualification and subsequently and gearing education to support the acquisition and retention of those standards
- new approach already evident of shifting from process to substance of a solicitor's skills and knowledge by requiring solicitors to undertake appropriate professional development to ensure they remain competent rather than formulaically mandating a certain number of CPD hours -- solicitors have the freedom and flexibility to decide for themselves what training and development they need to undertake in order to perform competently – solicitors must consider their training needs on an annual basis and take appropriate measures to maintain their competency, as defined in the competency statement
- place quality (achieving standards) rather than procedure (how education delivered – hours, content) at the heart of the training system
- inform educators about courses they need to develop to train intending or practising solicitors
- inform prospective solicitors what they need to demonstrate for licensure
- inform practising solicitors what they need to do to maintain their competency
- define effective performance for the solicitor profession
- first step to enable assessment of standards more rigorously and consistently
- support obligations on solicitors in the *Code of Conduct* – will be incorporated into Principle 5 of the *SRA Handbook* to show compliance with the statement is part of providing a proper standard of service in accordance with that principle

- tell consumers what to expect from solicitor and give public and consumers confidence that solicitors meet practice standards

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[52] Training for tomorrow: A competency statement for solicitors.
https://www.sra.org.uk/globalassets/documents/sra/consultations/competency-statement-consultation.pdf?version=4a1ac1

Actions Taken to Develop an Evidence-Based Statement

- contracted external research company to conduct scoping exercise through 44 interviews with solicitors, academics, Legal Practice Course providers, consumer representative groups and individual consumers;
- held three workshops with approximately 40 participants at each session – participants included regulators, consumer representatives, a range of education providers, and solicitors drawn from a range of practice types, such as in-house, sole practitioners, city and regional firms;
- established a 'Delphi Group' with eight members with experience and expertise in developing professional competency frameworks – the group members were unknown to each other and worked independently of each other;
- contracted research firm to test draft competency statement through independent online survey

  - random sample of 10,000 solicitors from the SRA's Practising Certificate holder database were selected and sent e-mail invitations to complete a questionnaire on a staged basis

  - reminder emails were sent to complete the survey with particular attention to potential respondents from underrepresented groups, such as certain practice areas

  - 1070 solicitors responded, 78% from private practice 22% in-house practice

  - solicitors represented all major practice areas

  - 503 individual consumers of legal services (members of the general public who had used the services of solicitors within the last 3 years) also responded;

- contracted research firm conducted telephone survey to test draft statement with 204 businesses who had used solicitors in the last three years; and,

- engaging in the present consultation and will consider views of respondents in final version.

Rationale for Content of the Statement

Relationship to Competencies of Barristers

- similar as much as possible to the competency statement under development by the Bar Standards Board (BSB) -- included representatives of the barrister profession initially when developing competency statement so that approach is consistent with BSB and identifies the differences in practice between barristers and solicitors while facilitating flexibility between the two professions -- testing and consultation processes on competency statements are being conducted separately by SRA and BSB to ensure the competency statement developed by each entity properly reflects the particular requirements of each profession

Capable of Assessment

- Once standards are developed for a profession, mechanisms must be implemented to confirm that the standards have been met

- Are many possible ways to assess that standards have been met
- Competencies have been developed to ensure they are all capable of being assessed objectively and consistently through a variety of methods

Equality Impact Assessment

- No adverse equality impacts found with using competency statement for continuing competency
- Equality impact assessment of competency statement as a mechanism to assure standards at point of licensure will occur when develop new qualification framework

Response to On-Line and Phone Surveys

- respondents to the phone and online surveys were positive about the competency statement: 87% of solicitors and individual consumers, and 90% of business consumers gave the competency statement a rating between 7 and 10 on a 10-point scale in which 10 was high

Statement of Solicitor Competency

- identified core set of competencies that are common to all solicitors, regardless of their role, their practice area, or their level of experience, such as ethical behaviour, technical skills (drafting, negotiating, researching), management of work (planning, prioritising, record keeping) and working and communicating with other people

- 'how these qualities are demonstrated will vary according to practice area and experience but all competent solicitors should possess them'
- flexible enough to recognise range of environments in which solicitors operate and range of roles they undertake

- describe activities all solicitors need to be able to do competently rather than attributes they require because priority of a regulator is not identifying the precise balance of skills, knowledge, behaviours, or attitudes required to deliver activities competently but on the activities themselves that must be delivered competently
- ethics listed first in *Statement of Solicitor Competency* because of the importance attached to it by SRA and people consulted about the competency statement
- equality and diversity have been embedded in the ethics section as a standalone competency because highlighting this behaviour in the competency statement will reinforce the principles of equality of opportunity and respect for diversity in Principle 9 of the *SRA Handbook*
- complement objectives of employers
  - ➢ may help law firms and in-house legal departments identify individual and organizational development needs and plan relevant training and inspire development of organization specific competency framework
  - ➢ some legal firms and departments already have sophisticated competency frameworks for solicitors at various stages and roles in the organization
  - ➢ SRA's statement not intended to replace organizational statements but instead to help individual solicitors understand generic competency required of them as a regulated individual and use that information to reflect on their competency in the context of their practice, identify any gaps in competency, and determine where

their future development needs lie along with tools available through their employers to assess competency

Threshold Standard

- Because the *Statement of Solicitor Competency* is generic and applies to all solicitors, threshold standard was necessary to articulate performance expectations for trainees to be licensed as solicitors

- SRA's duty is to set standard for licensure at a level to protect consumers and uphold the rule of law while not unjustifiably preventing people from entering profession
- 78% of randomly selected practitioners in an on-line survey rated the *Threshold Standard* at 7 or above on a 10-point scale in which 10 was high in terms of accurately reflecting the standard of performance they demonstrated as a newly qualified solicitor, with 37% of respondents scoring the *Threshold Standard* at a 9 or 10

Statement of Legal Knowledge

- developed based on core of knowledge that underpins all practice regardless of area of specialization that all newly-qualified solicitors must know and practising solicitors must retain awareness of throughout their career 'insofar as it touches their practice'
- core knowledge requirements have not changed very much over the years and continue to provide the basic underpinning of legal practice
- engaged in targeted consultation with expert academics and practitioners to confirm longstanding prescribed legal knowledge areas remain up to date and comprehensive
- legal knowledge has been incorporated into the activity-based *Statement of Solicitor Competency* by connecting it to the activities that solicitors must be able to complete with the knowledge they possess, such as apply legal principles to facts
- this competency requires a solicitor to have a detailed knowledge of the law related to the solicitor's practice area and to have sufficient awareness of background legal knowledge to spot relevant issues and to know when to seek additional advice
- *Statement of Legal Knowledge* reflects the broad knowledge base required through training for qualification and the areas over which awareness should be maintained over time as the solicitor specializes
- Approach to *Statement of Legal Knowledge* is consistent with granting generic license to new solicitors to practice in all areas of activity reserved to solicitors and the high consensus in research informing the development of the statement that solicitors should have a broad base of background legal knowledge over and above the specialist knowledge required for their area of practice because a broadly based training in the law distinguishes solicitors from other legal professionals who receive training which is more focused on their specific area of practice
- there was high level of consensus about components of broad base of knowledge
- *Statement of Legal Knowledge* tries to strike a middle ground between the need to spot issues outside a solicitor's practice area and the recognition that the broad knowledge which solicitors have on qualification will inevitably fade where it is not used as the solicitor specializes during years of practice
- practising solicitors not expected to retain active knowledge of all areas in the *Statement of Legal Knowledge*, or to undertake CPD in relation to legal topics which are unlikely ever to arise in their practice area
- practising solicitors are expected to be able to recognise possible problems even when these are outside their immediate area of practice
- *Statement of Legal Knowledge* deliberately broad and high level

- Not intended to be an exhaustive list of legal topics or dictate content of law degree
- Tries to strike balance between avoiding too detailed a list that will have inevitable gaps, stifle innovation in teaching, and rapidly become obsolete with providing enough guidance to support curriculum development and individual learning

Solicitors Regulation Authority. (2015, March)[53].

This report summarizes the 72 formal responses the SRA received to the consultation paper on its draft competency statement. Responses were received from regulatory bodies, individual solicitors and regulated entities, training providers, representative groups, higher education providers, individual academics, and the Law Society. Responses were generally detailed and well evidenced. The widest range of views was expressed on the *Statement of Legal Knowledge* with views differing between different stakeholder groups. There was much less variability in responses to the *Statement of Solicitor Competency* and *Threshold Statement*.

The SRA sets out its response to questions and concerns raised through the consultation and notes minor amendments made in response to the feedback.

Goals of the Consultation

- Obtain qualitative feedback on the content and core functions from range of stakeholders
- Deliver webinar for interested parties and gather quantitative feedback through online voting
- Final stage of testing of competency statement
- Confirm final documents that will be posted on SRA's website for now
- Competency statement will not be carved in stone – statement will naturally evolve with time, especially as options for assessing competency at the point of qualification are explored, so statement will be kept under review on an ongoing basis

Feedback and SRA's Response

Threshold Statement
- Some respondents felt the level of performance on qualification was set too low or too high but the majority thought the level was correct, so the SRA did not change it for now
- Some respondents expressed concern that commenting on the level was challenging when the process for assessing if the level is reached is unknown – SRA will address how assessment will occur in another consultation

Statement of Solicitor Competency
- Vast majority of respondents agreed competency statement reflected what they would expect a competent solicitor to be able to do
- Most respondents did not consider that additional competencies should be included
- Some respondents felt competency statement was too broad, and not specific enough
  - ➢ SRA response:
    - ❖ Statement is intended to be broad and generic so that it can be applied to the profession as a whole

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[53] A competency statement for solicitors: SRA response to the consultation. https://www.sra.org.uk/globalassets/documents/sra/consultations/competency-statement-consultation-response.pdf?version=4a1abe

- ❖ Statement is designed with intention that solicitors will specialize in certain areas of law and the statement is a starting point in examining their individual practice
- ❖ Impossible to cover full range of competencies of solicitors practicing in every field in one statement
- ❖ Not desirable, even if possible, to have many documents with detailed competencies for every practice area
- ❖ Some skills required for particular areas are encompassed within the statement without being explicitly referred to, such as competency B2 about undertaking legal research encompassing statutory interpretation without explicitly mentioning it
- ❖ All aspects of professional conduct are encompassed within competency A1 about acting honestly and with integrity, so it is not necessary to single out particular rules of professional conduct in the statement
- Some respondents, particularly professional bodies, suggested statement should make clear that the standard required for practice is high
  - ➢ SRA response:
    - ❖ Saying standard is high is vague
    - ❖ Better to communicate that practicing as a solicitor is challenging by including range of competencies in the statement
- Concerns were expressed about competency 4(c) requiring solicitors to spot issues outside their area of expertise and maintain awareness of broad base of knowledge -- some respondents felt that this expectation was unrealistic and even dangerous by distracting them from the information they need to know to work in their specialized area of practice
  - ➢ SRA response:
    - ❖ Competency requires more than a narrow knowledge of a particular practice area
    - ❖ Solicitors must know areas of law that are relevant, even if outside their particular practice area but the consultation paper had indicated the SRA did not intend to require solicitors to maintain knowledge of law with no bearing on their practice
    - ❖ To clarify this point, the SRA is adding a comment to 4(c) that awareness of background law is only required insofar as it is relevant to a solicitor's practice
    - ❖ This change is consistent with competency A2(d) which requires solicitors to maintain an adequate and up-to-date understanding of relevant law, policy and practice
    - ❖ SRA also updated the footnote accompanying competency 4(c) that lists required areas of legal knowledge to increase clarity that solicitors must be aware of all relevant law which affects their area of practice, regardless of whether listed in the footnote
- Range of comments received on structure of statement – three main themes: queries if the statement should be read as a whole or whether parts of the statement should be repeated in different sections, 'working with other people' section should come before managing self, and commercial and business management issues did not have sufficient detail
  - ➢ SRA response:
    - ❖ Incorporated all of these concerns
    - ❖ Added a note to read the statement holistically so that a requirement in one competency applies to another

- ❖ 'Working with others' competency domain now comes before 'Managing themselves and their own work' competency domain
- ❖ Enhanced the behavioural indicators in the 'apply good business practice' competency to state 'demonstrating an adequate understanding of the organisational, *commercial* and financial context in which they work and their role in it'
- Majority of respondents welcomed the competency statement as a framework for ensuring continuing competency but some expressed confusion about using the competency statement for continuing competency
  - ➤ SRA response:
    - ❖ A toolkit will be available in spring 2015 to assist solicitors with suing the competency statement to plan training activities

Statement of Legal Knowledge
- Individual solicitors and regulated entities were broadly positive but higher education providers, academics, and representative groups often had concerns
- Many respondents among all stakeholders believed that the *Statement of Legal Knowledge* did reflect, in broad terms, the knowledge that solicitors should be required to demonstrate prior to qualification
- However, were many comments submitted from the profession indicating that employment, intellectual property, and family law should be added
- Representative groups argued that their own specific area of practice should be include
- Other respondents understood that the statement was not intended to cover all practice areas
- There were opposing views on whether or not knowledge of reserved activities, such as probate, should be included
- Some argued that the statement needed more detail to give a sense of depth as well as breadth of knowledge while others argued that the statement was reducing the knowledge required
  - ➤ SRA response:
    - ❖ Family, intellectual property, and employment law are currently elective subjects in the Legal Practice Course completed by trainees prior to licensure – they are not currently mandated knowledge
    - ❖ Areas of knowledge included in the statement were identified through SRA's research as the core building blocks of solicitor competency – this research and subsequent testing confirmed that family, employment, and intellectual law were not core building blocks
    - ❖ SRA is mandated to authorize solicitors to carry out activities reserved to solicitors in the *Legal Services Act* and cannot fulfil that mandate without ensuring solicitors are competent in those activities – for this reason, knowledge of reserved activities must be included in the statement
    - ❖ Focus needs to be core building blocks of knowledge – is not helpful to list every possible specialty area as a core competency with detailed information that must be learned about those areas
- Some respondents expressed the view that the statement was too detailed, wide, and prescriptive, particularly (but not exclusively) universities
  - ➤ SRA response:
    - ❖ Statement prescribes a level of detail beyond the current statement from the Law Society about the content requirements for a law degree

- ❖ As regulatory focus shifts to standards rather than process, outcomes will be prescribed more closely while requirements about processes for achieving outcomes are relaxed
- ❖ SRA is not undermining academic freedom – education providers can choose what role they wish to play in preparing students for practice as a solicitor and thus if they want to teach subjects that will give students the competencies for licensure
- ❖ Given that views on the knowledge statement were divergent and strongly held with little consensus for amendments, the statement will not be changed at this time

Solicitors Regulation Authority. (2019, November 25)[54].

- Ethics, professional conduct and regulation, including money laundering and solicitors accounts
- Wills and administration of estates
- Taxation
- Law of Organisations
- Property
- Torts
- Criminal Law and Evidence
- Criminal Litigation
- Contract Law
- Trusts and Equitable Wrongs
- Constitutional law and EU law (including Human Rights)
- Legal System of England and Wales
- Civil Litigation

Note: specific information the solicitor must know is listed in each category

Solicitors Regulation Authority. (2019, November 25)[55].

Preamble

- Competency is defined as 'the ability to perform the roles and tasks required by one's job to the expected standard' (Eraut & du Boulay, 2001). This definition recognises that requirements and expectations change depending on job role and context. This definition also acknowledges that competency develops over time. Someone may work 'competently' at many different levels at different career stages or from one day to the next depending on the nature of the work. The competency statement is intended to be read holistically. For example, the requirement in A1e to respect diversity and act fairly and inclusively pervades all areas of work and underpins all of the competencies in the statement.

Categories and Subcategories

A: Ethics, professionalism and judgement
    A1: Act honestly and with integrity, in accordance with legal and regulatory requirements and the SRA Standards and Regulations

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[54] Statement of legal knowledge. https://www.sra.org.uk/solicitors/resources/cpd/competency-statement/statement-legal-knowledge/
[55] Statement of solicitor competency. https://www.sra.org.uk/solicitors/resources/cpd/competency-statement/

A2: Maintain the level of competency and legal knowledge needed to practise effectively, taking into account changes in their role and/or practice context and developments in the law

A3: Work within the limits of their competency and the supervision which they need

A4: Draw on a sufficient detailed knowledge and understanding of their field(s) of work and role in order to practise effectively

A5: Apply understanding, critical thinking and analysis to solve problems, including

B: Technical legal practice

B1: Obtain relevant facts

B2: Undertake legal research

B3: Develop and advise on relevant options, strategies and solutions

B4: Draft documents which are legally effective and accurately reflect the client's instructions

B5: Undertake effective spoken and written advocacy

B6: Negotiate solutions to clients' issues

B7: Plan, manage and progress legal cases and transactions

C: Working with other people

C1: Communicate clearly and effectively, orally and in writing

C2: Establish and maintain effective and professional relations with clients

C3: Establish and maintain effective and professional relations with other people

D: Managing themselves and their own work

D1: Initiate, plan, prioritise and manage work activities and projects to ensure that they are completed efficiently, on time and to an appropriate standard, both in relation to their own work and work that they lead or supervise

D2: Keep, use and maintain accurate, complete and clear records

D3: Apply good business practice

Note: specific behavioural indicators are listed under each subcategory – the word 'including' is used to introduce each list of behavioural indicators, suggesting that the list is not exhaustive

Solicitors Regulation Authority. (2019, November 25)[56].

The *Threshold Standard* was developed to set out the level at which the competencies should be performed upon qualification as a solicitor. Level three is the threshold standard required at the point of qualification. Levels 1-2 and 4-5 are provided for context. There are six aspects of each level. A trainee has achieved entry level competency (level three) if the trainee meets the following standard on each of the six measures:

- Functioning knowledge: Identifies the legal principles relevant to the area of practice, and applies them appropriately and effectively to individual cases
- Standard of work: Acceptable standard achieved routinely for straightforward tasks. Complex tasks may lack refinement
- Autonomy: Achieves most tasks and able to progress legal matters using own judgement, recognising when support is needed
- Complexity: Able to deal with straightforward transactions, including occasional, unfamiliar tasks which present a range of problems and choices
- Perception of context: Understands the significance of individual actions in the context of the objectives of the transaction/strategy for the case
- Innovation and originality: Uses experience to check information provided and to form judgements about possible courses of action and ways forward

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[56] Threshold standard. https://www.sra.org.uk/solicitors/resources/cpd/competency-statement/threshold-standard/

Hand, J. & Sparrow, C. (2015)[57].

The authors note that the SRA's *Statement of Legal Knowledge* appears simply to be a list of all of the existing content delivered to trainees. All the present foundation subjects are included that are listed in the Joint Statement developed by the Law Society and General Counsel of the Bar in 1999. There is a substantial range of other subjects included that might currently be expected to be covered in the Legal Practice Course (LPC). There has been no reduction in the breadth of knowledge that a solicitor is expected to demonstrate or the degree of coverage of the foundation subjects. The SRA should have tried to identify true, common foundation knowledge instead of simply replicating what already exists through all training venues experienced by law students.

Legal training in Commonwealth countries generally includes 5-7 foundation subjects. Therefore, there is a role for foundation subjects in legal training but the core requirements have been obscured in the SRA's competency statement by the SRA adding new elements.

Shephard, C. (2016)[58].

Most of the article focuses on whether efficiencies can be found in the provision of legal services by substituting paraprofessionals for professionals in some aspects of legal services. The author describes various ways that solicitors and paralegals are similar and different at present in their training and work performance. The author briefly discusses the impact of the SRA's Statement of Solicitor Competency on the potential differentiation and overlap between solicitors and paralegals.

The author notes that the SRA considers paralegals distinct from qualified solicitors. However, legal paraprofessionals like paralegals may feel that they meet the requirements of the SRA's Statement of Solicitor Competency and should be licensed as solicitors. The author indicates that the Law Society of England and Wales noted that the competency statement does not define what competency looks like for solicitors compared to a legal executive or paralegal. According to the author, the SRA did not address this issue based on the rationale that the SRA does not have the authority to regulate paralegals. The author notes that legal paraprofessionals may be able to qualify as solicitors if the SRA implements its musings to create a licensing regime that only requires passing an exam testing for the competencies established by the SRA given existing overlap in work between paraprofessionals and solicitors.

Brannan, J, Purtill, V, & Stec V. (2018)[59].

Regulators of three of the legal professions in England and Wales reflect on their implementation of the LETR. Only the comments from the SRA representative about the organization's work on competencies are relevant for the purposes of this review.

The SRA notes that the organization's work on the competency statement has fulfilled the direction the LETR provided about competencies:

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[57] Crumbling, creeping or enduring – the foundations of legal knowledge at a time of training reform. *Amicus Curiae*, 104, 10-12.
https://doi.org/10.14296/ac.v2015i104.4929

[58] Strategies for managing change and the use of paraprofessionals: A cross-sector study for the benefit of post-LETR providers of legal services. Northern Ireland Legal Quarterly, 67(2), 241-250.
59 The Legal Education and Training Review 5 years on: The view from the regulators. The Law Teacher, *52*(4), 397-408. https://doi.org/10.1080/03069400.2018.1526476

- LETR recommended new learning outcomes, based on occupational analysis and broad stakeholder engagement which would be cascaded into the curriculum
- SRA's development of the competency statement involved focus groups, a Delphi group, external research, and a formal consultation
- Over 2000 individuals and representative groups – academics, professionals, consumers – were involved
- LETR recommended a reflective-based approach to continuing competency which the SRA has introduced
- LETR recommended greater emphasis on ethics, probate, and communication skills in solicitor training
- SRA embedded these issues in the competency statement

The SRA author (J. Brannan) notes that the LETR did not acknowledge that the emphasis on competencies recommended in the report would inevitably necessitate something like the Solicitors Qualifying Examination currently under development to assess those competencies.

Ching, J., Maharg, P., Sherr, A., & Webb, J. (2018)[60].

The authors of the LETR argue that the SRA has not fully implemented the report's recommendations related to competencies. They also make some general comments about the advantages of competencies that are properly implemented.

Advantages of Competency Frameworks

- Can be used to focus on the actual needs of the learner which can be a strong corrective to curriculum drift
- Students are not required to undertake a high degree of expensive 'just in case' learning and instead can focus on the 'just in time' requirements associated with the actual work of junior lawyers which in turn enables better balancing and complementarity between stages of legal education and training
- Can serve as a limit on regulation – if the primarily regulatory function is to ensure competency, then the regulator is obligated to think carefully about the range of outcomes specified and the standard set for competency which decreases the risk of overreach
- Can encourage experimentation in education as the focus of regulation shifts from the process of delivering a specific program to the means by which trainees demonstrate that they meet the competencies

Critique of SRA's Work on Competencies

Competencies on Qualification
- SRA's decision to assess competencies through a Solicitor Qualifying Examination (SQE) demonstrates the concerns that critics of competency frameworks have raised that these frameworks cannot capture the richness of high-level professional learning, and risk under and over inclusiveness
- The authors critique the content of the SQE [NOTE: given that the content of the SQE is based on the competency statement as per the article cited above by a representative of

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[60] Legal Education and Training Review: A five-year retro/prospective. The Law Teacher 52(4), 384-396. https://doi.org/10.1080/03069400.2018.1526472

the SRA, the critique of the content of the SQE is to some degree a critique of the content of the competency statement]

- Breadth of the knowledge component of the SQE continues to lock training into preparation for general practice that no longer exists
- Many of the core professional skills assessed (research, oral and written communication, advocacy) are constants but newer capabilities are becoming critical and are not addressed
- LETR highlighted commercial and social awareness – the authors note that the SRA outcomes do capture the commercial context
- Other capacities emphasized in practice highlighted by LETR are not addressed by the SRA, such as proper understanding of legal technology and project management
- Little indication that SRA has addressed impoverished focus on ethics and professionalism, and particularly the need for a broader training in professional values identified by LETR

Content of Continuing Competency

- SRA's use of the same competency statement for qualification and continuing competency creates two major problems:
  - Presumably to avoid complaints by solicitors who do not want to be forced to keep up to date in irrelevant areas of law, the legal knowledge element has been removed from the competency statement for the purposes of Continuing Professional Development (CPD)
  - Statement omits the kinds of activities that are confined to more senior solicitors, such as practice and people management – LETR recommended addressing some of these senior level competencies

Guidance on Continuing Competency

- Although the competency statement was designed collaboratively, guidance on its use focuses on aligning with employers rather than individual solicitors
- SRA states that individuals will have to apply the statement to their practice but employers might want to consider how it aligns with internal competency frameworks, performance development frameworks, appraisal frameworks, and organizational training plans
- This guidance puts the CPD scheme under the overwhelming control of a competency statement aligned to the wishes of employers
- Consequently, employers have the opportunity to prescribe rigid and static notions of competency and vitiate the autonomy offered by an outputs CPD scheme focused on the individual's learning goals instead of numbers of hours of training
- Aligning regulatory and employer objectives enables CPD planning templates and competency frameworks to be used to oppress, limit ambition and hold to account
- Philosophy of CPD based on individual goals related to a competency stated is liberating but that potential may be obliterated in the implementation if individuals are not truly free to plan their own learning

Useful Information to Inform Competencies Ignored

- SRA ignored information in the LETR about how solicitors spend their time
- There was little change in how solicitors spent their time between 1992 and 2012 despite the immense change during that time period in society, the nature of work, and the explosion of digital influence in work generally and in law in particular

- This observation suggests a need to consider the challenges of organizing, planning, teaching, and engendering change among solicitors

Ching, J. (2018)[61].

The chapter describes the regulatory landscape for all the legal professions in England and Wales as well as the routes to qualification in all of the professions. The author also describes the responses of the regulators to the LETR.

The one recommendation that has been taken up with enthusiasm by virtually every regulator is focusing on the end goal of training through the creation of competency statements. Prior to the LETR, the regulators focused on inputs to the training scheme, such as core subjects to be covered in law school, with the hope that people would emerge from training competent to perform the role for which they were trained. The shift to regulating training by identifying the competencies that trainees must demonstrate by the end of training is likely driven by the direction of the Legal Services Board (LSB). This organization is overarching above all of the regulators for the individual legal professions and dictated a focus on outcomes when regulating legal training after the LETR report was released.

The LSB gave five directions to the legal regulators after the LETR report was released. Note that two of these directions dictated a focus on competencies at the point of qualification for a legal profession and on an ongoing basis over the years of practice:

- Education and training requirements [must] focus on what an individual must know, understand and be able to do at the point of authorisation; and,

- Standards are [to be] set that find the right balance between what is required at the point of authorisation and what can be fulfilled through ongoing competency requirements.

The author of the chapter notes that the recommendation in the LETR report that a sector wide statement be created for all legal services seems to have been implemented by default rather than by design. It is not always clear how the competency statements have been created for the individual professions; however, the statements are similar in wording, suggesting there was some degree of copying and pasting among them. The author notes that a sector wide statement created by design would have been useful as a benchmark against which the individual professions could identify their own distinct roles.

Some of the LETR recommendations about content areas for competency statements have been adopted. Competencies/learning outcomes about ethics, research, and written and oral skills are contained in the majority of statements as recommended by the LETR.

The chapter discusses the pros and cons of competency statements generally.
Advantages:
- Provides transparency by establishing clearly and impartially the attributes required for a role or activity that can be compared across similar statements for other professions

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[61] Multiplicity and mutability in professional legal education in England and Wales. In Jahrbuch der Rechtsdidaktik 2017 *(pp.279-324).* Berliner Wissenschafts-Verlag.
http://irep.ntu.ac.uk/id/eprint/33432/

- Allows innovation in training because are different ways students may be taught to achieve the competencies
- Could be used as leverage by a trainee to negotiate opportunities for experiences from the training placement employer to develop those competencies – recent research indicates that leverage may be needed to ensure appropriate learning experiences are offered because not all trainee solicitors are given work enabling them to achieve required competencies in advocacy, client contact, and negotiation

Disadvantages:
- May inappropriately atomise an activity (legal practice) that cannot be dissected into individual items
- Does not solve the problem of employers making unreasonable demands – if there are many applications for positions who meet all competencies, employers can focus on other elements to distinguish them, such as attendance at elite universities
- Does not accommodate someone with skills that were not selected to be part of the statement who cannot meet all the skills in the statement – for example, a magnificent researcher with terrible interpersonal skills who could help the firm as long as s/he does not talk to clients

The author notes that the SRA initially took competency frameworks to an extreme as the basis for training by proposing that someone could be licensed as a solicitor simply by passing a test for the competencies. The SRA has subsequently modified the proposal to require higher education of some kind (not a law degree) and a period of supervised workplace training in addition to the examination. The author notes that there is no information available indicating that some competencies can only be developed through supervised workplace training. Accordingly, this training requirement may arise from a concern with socializing trainees into the habits and disposition of the solicitor profession rather than a concern with learning skills.

Guth, J. & Hervey, T. (2018)[62].

The article theorizes about the impact of Brexit on the extent to which international law will be taught in law schools in the United Kingdom (UK). The authors argue that there will be an ongoing need for UK law students to have some knowledge of European Union (EU) law because UK law has been intertwined with EU law for over 40 years. Some areas of UK law, such as consumer protection law, will be impossible to understand without learning their EU influence and background.

The nature of the exit from the EU will determine the amount of EU law students need to know beyond its influence on UK law. If the UK adopts regulatory alignment with the EU, then legal knowledge of EU regulatory structures will be essential for advising clients in domestic trade. Even if the UK does not align with EU regulations, a significant portion of the UK's trade will likely be with the EU, necessitating that lawyers have the knowledge to advise commercial clients about EU regulations.

The authors argue that the SRA's competency statement will magnify potential losses of teaching EU law in law schools in England and Wales in the aftermath of Brexit. The SRA's *Statement of Legal Knowledge* which will be the basis of the content of the qualifying examination under development by the SRA demands little knowledge of EU law. Under the heading 'Constitutional law and EU law (including Human Rights),' required knowledge of EU law is limited in the list of specific information solicitors must know to 11(g): 'the place of EU law in the constitution.' [Note: this information from

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the authors is not entirely accurate/current. The EU is also mentioned in 11(a): 'the basic institutions (the Crown and Parliament, central government, devolved institutions, EU institutions, and the judiciary) and principles of the British Constitution']

The authors express concern that the SRA's *Statement of Legal Knowledge* does not require any knowledge of substantive EU law. They note that the place of EU law in the constitution will change over time as Brexit unfolds, so the specific knowledge that will be required by the SRA in that regard is uncertain at present. The intention for now is to encapsulate the place of EU law in the UK constitution in *European Union (Withdrawal) Act 2018*. The SRA is not indicating that international (or at least European law) is still important in legal education in England and Wales despite Brexit.

The SRA's plan to launch a qualifying licensing exam based on the competency statement also creates impetus for English and Welsh law schools to move away from teaching international law in the wake of Brexit because the SRA is creating an instrumental and vocational approach to legal education. In such a conceptualization, students are taught only what they must learn to practice. Only those who will practice international law need to receive training other than domestic law in the wake of the diminished place of EU law in UK law post-Brexit. Domestic law is necessary but international law is simply 'nice to have' for those who intend only to practice domestically in the UK in future.

The article also comments briefly on the impact of Brexit on law schools in Ireland. The authors note that it is essential for lawyers in EU Member States to understand EU law. A special settlement is expected for Ireland related to Brexit. Therefore, EU law will continue to be important in Irish legal education and practice. Irish law schools may draw students away from UK schools because Ireland will offer English-speaking law graduates access to more markets for their legal services than UK graduates, in part because Irish students will still learn EU law.

Jones, E. (2018)[63].

The author indicates that the emotional realm has traditionally been disregarded or avoided in law, especially in the United Kingdom. Despite the scientific evidence that cognition and emotion are intertwined, there continues to be disdain for the emotional realm in the legal community in favour of the cognitive/rational realm. For these reasons, the LETR's acknowledgement that the affective dimension is 'critical to professional practice' was ground-breaking. Although stakeholders increasingly demand that legal professionals display 'soft skills,' such as client handling, that are implicitly based on the affective dimension, there is not informed or nuanced guidance and support provided to facilitate legal professionals understanding the emotional realm.

How LETR Contributed to Regulators Ignoring Affective Dimension

Regulators of the legal professions have avoided explicit recognition of the affective dimension in their competency frameworks developed as a result of the LETR. The author indicates that the LETR did not give conceptual clarity to the affective dimension which contributed to the regulators ignoring the affective realm in their competency frameworks. The report lacked clarity about the affective dimension in the following ways, according the authors:
- The actual term 'affective' is not defined in the report. The term has a range of definitions in the legal and psychological literature. For example, sometimes the term

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[63] Affective or defective? Exploring the LETR's characterisation of affect and its translation into practice. *The Law Teacher*, *52*(4), 478-489. https://doi.org/10.1080/03069400.2018.1529275

'affective' is used interchangeably with the term 'emotion' and other times the two terms are given separate meanings.

- The LETR also created confusion about the meaning of the affective realm by putting it together with morality as the affective/morality competency. It is unclear which of the abilities and traits the report lists in this competency are linked to affect and which are moral in nature
- Report uses the terms 'emotional intelligence,' 'empathy,' and 'resilience' in reference to the affective dimension without defining these terms
- These terms are in popular usage and already have some currency in legal practice
- There are potential benefits to using terms that can be related to by the legal professions but there is also a need to use terminology that has a sound evidence base
- Meanings of these terms are contested in the scientific literature and thus these terms are too broad and ambiguous to be the basis of a meaningful competency-based approach unless they are defined as part of the competency

Implied Affect in the SRA Competency Statement

- SRA competency statement has no specific reference to affect or emotion but many of the competencies implicitly include elements of the affective dimension
- For example, the competency to 'establish and maintain effective and professional relations with clients' would require a careful weighing of the balance of empathy and detachment and an ability to manage emotions to maintain relevant boundaries
- Implicit incorporation of the affective dimension is not sufficient to ensure that solicitors develop this competency
- Given the history of the legal professions denigrating the emotional realm, solicitors are unlikely to identify emotional competencies in a competency statement unless they are explicit
- Affective dimension is already present within legal practice -- making it explicit within a competency framework will allow the discussion and exploration of its impact to be prioritized and developed in a more nuanced and informed manner which could eventually assist in alleviating some of the challenges experienced by legal professionals in managing this realm
- Affective competencies could include the abilities to identify, interpret and respond to emotions displayed by clients and colleagues and to regulate one's own emotional responses accordingly

Maharg, P, & Webb, J. (2019)[64].

The chapter focuses on different options for assessing law student performance. However, the chapter includes a brief critique of the competency framework developed by the SRA (page 34). The authors note that there has been little coordination or attempt to set baseline standards of competency across regulated legal occupations in England and Wales contrary to the LETR recommendations. The authors express concern regarding how the SRA developed its day one outcomes and standards for solicitors. They suggest that the SRA's work has simply repackaged existing knowledge areas. They note that there 'is little evidence of (consumer) risk-based thinking, and insufficient attention to many of the wider occupational capabilities' that the LETR report

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[64] Of tails and dogs: Standards, standardisation, and innovation in assessment. In A. Bone & P. Maharg (Eds.), *Critical perspectives on the scholarship of assessment and learning in law: Volume I: England* (pp. 25-49). Australian National University Press. https://doi.org/10.22459/CP01.2019

highlights. The authors claim that 'the outcomes and associated standards are thus both critically over- *and* under-inclusive.

The chapter also summarizes several initiatives globally in the past decade to reform legal education. They note there is a general shift to more outcomes-based legal education and regulation associated with a concern with law students developing a wider range of competencies. The authors identify the recurring competencies emerging from these initiatives (page 31):

- Conventional legal knowledge and skills very important but not sufficient
- Greater practice-readiness
- Capacity for innovative thinking, 'business solutions,' and enhanced ethicality.

Competency Statements for Lawyers in Canada

Background

How Lawyers are Regulated in Canada

Canada has a federal governance structure: there is a central government with legislative authority over national issues, and provincial/territorial governments with authority over local issues. Regulation of lawyers is the responsibility of the provincial and territorial governments. National laws are based on the common law system as are all provincial and territorial laws except the Province of Quebec which uses the civil law system.

National Requirement for Law Schools

The Federation of National Law Societies of Canada ('the Federation') is the national coordinating body of the fourteen provincial/territorial Law Societies (Federation of Law Societies of Canada, n.d.b). In 2009, the Council of the Federation approved standards for academic programs that qualify candidates for admission to the Bar. The provincial/territorial law societies adopted these standards in 2010 and they came into effect on January 1, 2015. These standards are called the 'National Requirement' (Federation of Law Societies of Canada, 2017).

The National Requirement mandates law schools to teach competencies in problem solving, legal research, oral and written communication, legal ethics, the foundations of law, core principles of public law, and legal principles applying to private relationships (Federation of Law Societies of Canada, 2018). The only change in the National Requirement since its inception is that students are no longer required to learn legal and fiduciary concepts in commercial relationships (Federation of Law Societies of Canada, 2017).

Critique of the National Requirement

Krishna (2011) asserts that the National Requirement is not useful because it is vague and was dated as soon as it was published. Krishna claims that legal practice in Canada is influenced more by global business than by competency statements from regulators of legal practice. He notes that Canadian legal practice has recently become more international in scope due to immigration and business trends.

Arthurs (2013, 86) states that important skills are missing from the National Requirement. For example, 'numeracy, inter-personal skills, and the capacity to organize information are

'*competencies*' almost all **lawyers** must deploy, but law students will not be obliged to acquire them' (emphasis in original). Arthurs (2013, p. 86) also notes that international, comparative, and transnational law are missing from the competencies although these areas of practice will become increasingly important as globalization advances. He is also concerned that the Federation did not justify its selection of competencies theoretically or empirically (2013, 87).

National Competency Profile for Admission to the Bar

At the time that the National Requirement was under development, the Federation also developed entry level competencies for candidates for admission to the Bar. In September 2012, the Federation approved a national entry-level competency profile for lawyers in Canada and notaries in the province of Quebec called the 'National Profile.' Law Society leaders and senior staff, and legal practitioners from across the country, drafted the competency profile under the guidance of a consultant specializing in credentialing. The draft competency profile was validated through a large-scale national survey of lawyers to ensure it accurately reflected the knowledge, skills, and abilities required for competent practice upon licensure. (Federation of Law Societies of Canada, n.d.a).

The competencies are divided into three main categories: substantive legal knowledge, skills (including core and specialized competencies), and tasks specific to lawyers (Ostaficzuk & Gagnon, 2017, p. 140). The National Profile lists skills in legal research and analysis, communication, practice management, and tasks such as interviewing clients and drafting documents (Marsden & Buhler, 2017, p. 189). The National Profile is more comprehensive and detailed than the National Requirement but the two documents are broadly consistent (Marsden & Buhler, 2017, p. 190).

The National Profile was adopted by thirteen of the Law Societies with the understanding that adoption of the profile was subject to approving a plan for implementation. In September 2015, the Federation released a proposal for developing a national assessment tool based on the competency profile. Following extensive consultation with the Law Societies, the committee concluded that there was not a critical mass of Law Societies ready to move forward with a national assessment tool. In June 2016, work on developing a national assessment tool ceased. Provincial/territorial Law Societies continue to implement local approaches to assessing the competencies of entry level lawyers, including determining the degree to which they will rely on the National Competency profile (Federation of Law Societies of Canada, n.d.a).

Limited Use of the National Profile

The Law Societies generally restrict their use of the national competency profile to assessing candidates for admission to the legal profession with the one notable exception of the Law Society in the Province of Alberta (Ostaficzuk & Gagnon, 2017, pp. 140-141). The Alberta Law Society used the national competency profile to identify the competencies that are required throughout a lawyer's career and built those competencies into mandatory self-assessment components of the Society's Continuing Professional Development program (Ostaficzuk & Gagnon, 2017, pp. 140-141; Law Society of Alberta, 2020b).

The national competency profile does not play a role in accrediting the education of graduates of legal education programs outside Canada. The Federation is responsible for evaluating the education of international legal graduates on behalf of all Law Societies except the Province of Quebec. The education and professional background of internationally trained applicants are assessed against the National Requirement. The assessment process identifies subject areas in which the applicant must demonstrate knowledge by completing a written examination or taking a course in the subject at a Canadian law school (Law Society of Upper Canada, 2017, p. 99-101).

After completing a course or passing an examination in the required subject areas, the internationally trained lawyer candidate is issued a Certificate of Qualification. The Law Societies treat this certificate as equivalent to a Canadian law degree. The Law Societies allow individuals awarded the Certificate of Qualification to enter the same licensing process as individuals educated in Canada (Law Society of Upper Canada, 2017, p. 99-101). The licensing process in all provinces/territories involves a combination of examinations and experiential training (Law Society of Upper Canada, 2017, p. 105).

Critique of the National Profile and the National Requirement

A few academics have critiqued both the National Profile and the National Requirement. Des Rosiers (2016) echoes Arthurs' (2013) concerns that important competencies are missing from the National Requirement and extends that critique to the National Profile. Des Rosiers notes that the competency frameworks developed by Law Societies are often viewed as complete lists of skills by students rather than minimum competencies. The expression by Law Societies of the essence of lawyering in the form of competencies risks reducing the legal function to its technical component and ignores the various social roles lawyers play. For example, the competencies do not identify the criteria to be 'an excellent judge or a formidable policy maker.'

Des Rosiers argues that competencies identified by Law Societies should be considered floors and not ceilings. She urges law schools to identify competencies students must learn to be excellent lawyers and outstanding citizens and to teach those skills to students. Marsden and Buhler (2017) agree with Des Rosiers that the National Profile and the National Requirement are missing important skills. Marsden and Buhler (2017, p. 187) express concern that statements of competencies for lawyers in Canada are generic, skills-based lists that they label 'the standard checklist.' Marsden and Buhler (2017, p. 187) argue that competencies should be responsive to the actual context of practice and that 'legal competency demands much more than disaggregated technical skills and knowledge: it requires relationality, critical reflexivity, and deep attention to context' (Marsden & Buhler, 2017, p. 187).

Marsden and Buhler's (2017, p. 187, 193, 200) conclusions are based on two qualitative studies identifying skills, values, and attributes that contribute to successful lawyering with marginalized people, namely impoverished, racialized, female, elderly, abused and or disabled people. They individually interviewed 12 people who had used legal services and held focus groups with a total of 9 people who worked as advocates in community organizations in the City of Saskatoon in the Province of Saskatchewan (p. 193). In the other study, 5 lawyers and 5 legal advocates who were not lawyers were interviewed individually about their work (p. 199). The participants represented various urban and non-urban areas in the Province of British Columbia (p. 199).

Marsden and Buhler's (2017, p. 190-192) studies address deficiencies they identify in the process used by the Federation to create the National Profile. The Federation developed a list of competencies and asked lawyers to validate them rather than conducting research with a broad cohort of people impacted by legal practice, including the users of legal services, to determine how competencies should be defined. The list generated by the Federation focused on private and corporate practice and did not recognize the diverse contexts in which lawyers provide services. The National Profile is also incomplete because skills were only included if the lawyers surveyed indicated the skills were used often and there were consequences for lawyers or clients if those skills were not performed. These criteria for defining competencies are narrow and did not generate a complete set of skills necessary for meeting the needs of all clients.

Based on the data gathered during both of their studies, Marsden and Buhler (2017, p. 205-207) propose that lawyer competencies must include three elements to support effective lawyering with marginalized people.

i) Expanded concept of relationships (p. 205)
- Competencies related to relationships must move beyond the lawyer-client dyad and focus on relationship building generally
- Many marginalized people did not trust lawyers, and identified relationship building with their communities as critical to developing trust that facilitated effective legal representation
- Examples of relationship building included having a physical presence in the community and learning the history of the community

ii) Expanded concept of communication (pp. 205-206)
- Communication was fundamental to effective lawyering in both studies, and should receive more attention in competency statements
- The National Profile does reference communication through various items, such as eliciting information, using language suitable to the purpose of the communication, and advocating in a manner appropriate to the legal and factual context
- However, study participants emphasized communication skills not captured in the National Profile, such as empathy, non-judgmental listening, and recognizing the power relations that can manifest in communication between lawyers from dominant social groups and clients from subordinate social groups

iii) Critical reflexivity and cultural humility (p. 207)
- Study participants discussed the importance of lawyers understanding how their own individual culture, and the legal culture, is only one way of viewing the world and recognizing how the legal system reproduces certain values and inequalities

Other Formats for Competencies

The Federation and the Law Societies have recently updated their expectations for lawyer competencies outside of the National Requirement and the National Profile. The Federation amended the commentary for the competency rule in its *Model Code of Professional Conduct* in 2019 to include the ability to use technology in a manner relevant to the lawyer's practice (Salyzyn, 2019). This change occurred after years of advocacy by various members of the legal profession in Canada to include technological competency in the practice standards for lawyers (Salyzyn, 2019). Law Societies may choose to incorporate the *Model Code of Professional Conduct* into the rules of conduct that govern their members or adopt their own codes of conduct (Salyzyn, 2019). Therefore, there is no guarantee that this change by the Federation will be imposed on the practice of Canadian lawyers (Salyzyn, 2019).

Some provincial/territorial Law Societies have established standalone standards for working with Indigenous people in response to a report issued in Canada in 2012 by the Truth and Reconciliation Commission (TRC). This report provided a blueprint for improving relations with Indigenous people which included recommendation to improve lawyer competency for serving the Indigenous population (Keating, 2020; Law Society of Alberta, 2020b; Marsden & Buhler, 2017, p. 188). The Law Society of British Columbia will require all practicing lawyers in the Province of British Columbia to complete a free online six-hour course about cultural competency for working with Indigenous people in 2021 (Keating, 2020). The Law Society of Alberta is in the process of developing an Indigenous cultural competency requirement for all Alberta lawyers (Law Society of Alberta, 2020b).

Critique of Standards for Working with Indigenous People

Marsden and Buhler (2017, p. 188, 205) link their research about effective lawyering with marginalized communities to achieving reconciliation with Indigenous peoples. They argue that reconciliation will not progress unless critical reflexivity about the ongoing role of the law in perpetuating colonization is a core competency for lawyers along with relationship building and understanding the complex nature of relationships.

Healey (2018) echoes Marsden and Buhler's (2017) concern that specific competencies are required for lawyers to advance reconciliation with Indigenous peoples. Healey notes that the definition of competency in the Codes of Conduct created by most law societies across the country does not include cultural competency (p. 119-120). He rejects the argument that a requirement for cultural competency can be read into the definition of competency since cultural competency is required to meet lawyers' other obligations, such as commitments to diversity and the public interest. Healey rejects this argument for two reasons (p. 120-122).

First, lawyer misconduct has not been disciplined based on an explicit reference to culture even when there is clearly an element of cultural incompetency in a lawyer's actions, such as a case of a white lawyer providing ineffective representation for someone from an African-Canadian community. The court framed the lawyer's actions as failing to uphold the right to a fair trial instead of framing the issue as misunderstanding of the African-Canadian community. Cultural incompetency cannot be so easily ignored if it is an explicit rather than implicit competency for lawyers.

Healey's second reason for rejecting the idea that cultural competency should be read into the definition of competency is that the current definition of competency is limited to the lawyer's relationship to the client. Healey argues that progress will not be made towards reconciliation with Indigenous peoples unless a broader cultural competency obligation is created towards everyone rather than simply towards individual clients. Healey proposes adding cultural competency explicitly to the concept of civility in Codes of Conduct because the civility obligation extends to all people and not just clients (127-128, 130-131).

Provincial/Territorial Comparisons

We found little in the way of debate in Canada about which provincial/territorial statement of lawyer competencies is the best framework. The relatively small body of literature discussing lawyer competencies in Canada outlined above suggests that individuals who critique lawyer competencies identify a similar overall approach to competencies from Canada's various Law Societies and they question the value of this overall approach for ensuring the provision of legal services that meet the needs of individual clients and Canadian society.

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Competency Statements for Lawyers in Australia

Background

Licensing Process for Lawyers in Australia

Australia has a federal governance structure: there is a central government with legislative authority over national issues, and state/territory governments with authority over local issues. Licensing lawyers is the responsibility of the state/territorial governments (Hawkins, 2008, p. 12).

Licensing is a two-stage process across the country. First, a candidate must be admitted to the legal profession by the supreme court of a state or territory. The supreme court in each state/territory is supported by an admitting authority which determines if candidates meet the three criteria to be admitted to the profession:

- completion of approved academic qualifications (usually an approved law degree from an accredited university).
- completion of an approved course of practical legal training ('PLT'); and,
- otherwise fit and proper person to be admitted to the profession (Hawkins, 2008, p. 11-12; Law Council of Australia, n.d.a).

The second stage of the licensing process is obtaining a practising certificate from the state/territorial regulatory authority (Hawkins, 2008, p. 12; Law Council of Australia, n.d.a). In some states/territories, there are separate regulatory authorities for barristers and solicitors. Regulatory authorities require solicitors to practice under supervision immediately after their practice certificate is issued (Law Council of Australia, 2017a). The length of supervised practice varies among states/territories within the timeframe of 18-24 months (Ching, 2016, p. 54-55; Law Council of Australia, n.d.a). Practising certificates are renewed annually and are subject to conditions to maintain professional indemnity insurance and undertake continuing professional development ('CPD') along with other discretionary conditions that may be imposed by the regulatory authority (Law Council of Australia, n.d.a).

Lawyers who were licensed outside Australia who wish to practice Australian law in Australia must apply to an admitting authority to determine if their qualifications are substantially equivalent to the academic and PLT requirements mandated for Australian candidates for admission to the profession. The assessment will specify any additional studies that must be undertaken in Australia to qualify for admission to the profession. After admission, foreign licensed lawyers would then apply to the state/territorial regulatory authority for a practising certificate similar to domestic candidates to the profession (Law Council of Australia, n.d.a).

Process to Establish Admission Standards for the Legal Profession

The standards for admission to the legal profession are established by the Law Admissions Consultative Committee ('LACC'). The LACC is responsible to the Australian and New Zealand Council of Chief Justices. LACC seeks consensus among its members for admission requirements to the legal profession. The LACC consists of representatives from each state/territorial admitting authority, the Council of Australian Law Deans ('CALD'), the Law Council of Australia, and the Australasian Professional Legal Education Council ('APLEC') (Law Council of Australia, n.d.b; Clark, 2017, p.4). The Law Council of Australia is a national organization that represents approximately 65,000 Australian lawyers through their member bar associations, law societies and law firms (Law Council of Australia, n.d.c). APLEC is a body representing PLT providers in Australia, New Zealand, Papua New Guinea, and Hong Kong (Australasian Professional Legal Education Council, n.d.).

PLT Competencies

PLT courses started emerging in the 1970s in response to a shortage of articles. By the early 1990s, PLT courses had proliferated sufficiently that LACC sought to establish consistent standards for such courses and proposed common elements for PLT in 1992 (Clark, 2017, p. 5). During the next decade, discussion about the appropriate content, length and timing for PLT courses continued with concerns emerging that proposed content areas were too ill-defined to support program design and assessment of student achievement (Clark, 2017, p. 6). LACC proposed addressing this concern by describing the PLT course standards in terms of required outcomes. This suggestion led APLEC and LACC to draft national PLT course standards in terms of competencies for entry-level lawyers (Clark, 2017, p. 7). The competency standards were approved by APLEC, the Council of Chief Justices, and all admitting authorities and professional bodies by 2002 (Clark, 2017, p.7; Law Admissions Consultative Committee, 2017, p. 1).

LACC asked APLEC to review the competencies in 2010 as a result of changes in legal training and legal practice since 2002. The major change that had occurred was the diversification of PLT with many candidates for admission to the legal profession obtaining their PLT through PLT courses and or supervised workplace training rather than through articles of clerkship. The 2002 standards were designed specifically for PLT courses. In light of the various routes taken for PLT at the time the review of the competencies was completed in 2013, the competencies were revised effective January 1, 2015 to apply to all forms of PLT. All applicants for admission to the legal profession must satisfy the admitting authority that they have achieved the prescribed competencies in order to be admitted to the profession (Law Admissions Consultative Committee, 2017, p. 1, 3 Ching, 2016, p. 50-51). If a competency may be demonstrated through observation as per the standards, the student must document in writing and critically evaluate the observation and the PLT provider must review the recording (Law Admissions Consultative Committee, 2017, p. 2-3, 6).

The other major change made to the standards in 2015 was the addition of detailed performance criteria for the various competencies (Ching, 2016, p. 51). The competencies remained divided into three categories in 2015 as in 2002: skills, values, and practice areas (Hawkins, 2008, p. 14; Law Admissions Consultative Committee, 2017, p. 3). There are four required skills: lawyers' skills, problem solving, work management and business skills, and trust and office accounting. The values relate to ethics and professional responsibility. The practice areas are divided into compulsory and optional practice. There are three compulsory practice areas: civil litigation, property law, and commercial and corporate law. Applicants for admission to the profession must also demonstrate competency in two of the following optional practice areas: administrative law, banking and finance, criminal law, consumer law, employment and industrial relations, family law, planning and environmental law, wills and estates (Law Admissions Consultative Committee, 2017, p. 3).

The format for each competency is the same. There is an overall descriptor of the competency, followed by a chart breaking the competency into elements each of which has performance criteria listed. There are explanatory notes after the chart.

For example, lawyer's skills are described as 'an entry-level lawyer should be able to demonstrate oral communication, legal interviewing, advocacy, negotiation, dispute resolution, letter-writing and drafting skills' (Law Admissions Consultative Committee, 2017, p. 18). There are eight elements of lawyers' skills listed: communicating effectively, cross-cultural awareness, interviewing clients, writing letters, drafting other documents, negotiating settlements and agreements, facilitating early resolution of disputes, and representing a client in a legal forum. Examples of performance criteria include observing the etiquette and procedures of the forum when representing a client and identifying the need for, and purpose of, letters (Law Admissions Consultative Committee, 2017, p. 18-20). Examples of the items in the explanatory notes are a list of the various dispute resolution

options included in the element about facilitating early resolution of disputes and clarification that the performance criteria for cross-cultural awareness includes communication difficulties encountered by Indigenous people (Law Admissions Consultative Committee, 2017, p. 20).

Internationally trained applicants for admission to the legal profession in Australia must provide documentary evidence that they met all the PLT competencies through their PLT or work experience as a lawyer in another country in order to be exempt from completing PLT in Australia. The only exception to this requirement is if the admitting authority uses its discretion to exempt an applicant from PLT whose overall experience is substantial, relevant, and current. If internationally trained applicants were not licensed to practice law elsewhere, they will not be exempted from any of the PLT requirements and must complete training that demonstrates their mastery of the competencies similar to Australian applicants (Law Admissions Consultative Committee, 2018, p. 5-7).

Critique of PLT Competencies
The importance placed on evidence of achieving the competencies for foreign and domestic applicants suggests that the PLT competencies are a fundamental component of the admission process for lawyers. However, there are accusations that the PLT competencies are more rigorous on paper than in reality because the placement component of the PLT is 'largely assessed on a pass/fail basis upon completion of the required hours rather than the demonstration of specific competencies' (McNamara & Ruinard, 2016, p. 13).

As a result of questions and criticisms about the competency of new lawyers articulated by the Council of Chief Justices, legal professional bodies, educators, lawyers' insurers, and a government commission into access to justice, LACC is seeking to complete a project spanning several years to develop a competency statement for lawyers (Law Admissions Consultative Committee, n.d., p. 2-3, 8; Clark, 2017, p. 3, 15). LACC wants to gather information from lawyers, clients, and the community about the work Australian legal professionals actually do, and will need to be able to do in the foreseeable future, so LACC can determine how legal professionals should acquire the knowledge and skills required to complete this work competently, ethically, and effectively. A competency statement that would apply to barristers and solicitors would be drafted by LACC based on the information gathered (Law Admissions Consultative Committee, n.d., p. 7-8).

LACC wants to develop a competency statement following the structure of the competency statement developed by the Solicitors Regulation Authority (SRA) in England. The SRA statement includes a threshold statement to identify the level of achievement of the competencies required of entry-level practitioners and a statement of legal knowledge and skills along with the actual competency statement. The process of developing the statement of knowledge and skills will include analyzing if the PLT competency standards and standards for academic legal programs are still appropriate (Law Admissions Consultative Committee, n.d., p. 4, 8).

Similar to the SRA's competency statement, LACC envisions aligning CPD requirements with a competency statement (Law Admissions Consultative Committee, n.d., p. 10). LACC has requested an amendment to its charter to expand its mandate beyond establishing standards for admission to the legal profession so that LACC could make recommendations regarding ensuring continuing competency after licensure (Clark, 2017, p. 17).

LACC's proposal to adopt the English approach to competencies suggests that LACC no longer believes that competency can be addressed in a piecemeal manner separately for each component of the legal training process. LACC is envisioning a holistic approach to competency on a continuum

of academic, PLT, supervised practice, and CPD as urged to do by some commentators (Clark, 2017, p. 17).

Other Initiatives to Address Competencies

Initiatives have been pursued in Australia in the past decade related to CPD and legal education that sometimes use the language of competencies. According to McNamara and Ruinard (2016, p. 13, 28) the distinction between learning outcomes and competencies is not well-defined. They suggest that assessment of capabilities occurs in relation to experiential learning activities (McNamara & Ruinard, 2016, p.28). The blurred distinction between competencies and outcomes may explain the fluctuating language used in Australia to refer to the results of CPD and legal education and the difficulty determining if these results should be situated in the realm of competencies.

Competencies in CPD

Most of the state/territorial legal regulatory authorities actively managing CPD schemes formed a national CPD taskforce in 2005 (National CPD Taskforce, 2007, p.9). The taskforce recommended a framework for CPD that mandated at least one unit of CPD taken each year in three core areas: practical legal ethics, practice management and business skills, and professional skills (National CPD Taskforce, 2007, p.5).

The specific CPD schemes adopted by the state/territorial regulators varied and did not conform uniformly to the national recommendations. However, each of the regulators adopted the core areas identified by the National CPD Taskforce of ethics, practice management and business skills, and professional skills (Law CPD, n.d.).

The Taskforce used the term 'core area' to describe the three mandated subjects for CPD (National CPD Taskforce, 2007, p.5) but the regulators use various terms in reference to these subjects. For example, the Legal Practice Board of Western Australia (2019, p. 1) and the Law Society of the Northern Territory (2016, p. 5) refer to each subject as a 'competency area.' The Victorian Legal Services Board + Commissioner (n.d.a) and the Law Society of New South Wales (n.d.) both refer to the subjects as 'fields.' The Queensland Law Society (2017, p. 3) and the Law Society of the Australian Capital Territory (2018, p.2) use the 'core area' terminology. The Law Society of South Australia (n.d.) refers to the subject areas as 'activities,' while the Law Society of Tasmania (2020, p. 2) simply refers to the mandatory CPD units as 'relating to' and lists the three subjects.

Although the three issues mandated for CPD are the same from one regulator to another, whether or not engaging these issues is competency development depends on the preferred terminology of the lawyer's regulator. The Victorian Legal Services Board + Commissioner ('The Board') explicitly differentiates the current approach to CPD from a competency-based approach in the recent paper the organization has issued seeking feedback on the current CPD regime (n.d.b, p.10). The Board (n.d.b., p. 10) associates competency-based approaches to CPD with CPD schemes that do not mandate specific subject areas and allow legal professionals to identify the areas in which they need additional training. Therefore, whether or not competency frameworks are used to organize CPD for legal professionals in Australia appears to be dependent on the regulator's definition of a competency-based approach.

Competencies in Law School Curricula

There has been considerable debate in Australia regarding the appropriate content for the law school curriculum. Some of this debate uses the 'competency' terminology, suggesting that some stakeholders in the Australian legal system view the organization of law school learning through the

concrete lens of competencies rather than through the more potentially abstract perspective of learning goals.

In 1992, LACC proposed uniform admission to the legal profession based on academic study of eleven subject areas: criminal Law and procedure, torts, contracts, property, equity, company law, administrative law, federal and state constitutional law, civil procedure, evidence, and professional conduct, including basic trust accounting (Monahan & Olliffe, 2001, p. 182). These subjects are referred to as the 'Priestly 11' (Monahan & Olliffe, 2001, p. 182). LACC has tried to amend these subject areas in response to recurrent criticism of these subjects but has never been able to achieve consensus for any changes among LACC members other than minor changes. (Clark, 2017, p. 3-4). The minor changes that have occurred were shifting trust accounting to the PLT competencies and renaming Professional Conduct to Ethics and Professional Responsibility in 2008 and changing the descriptions of Civil Dispute Resolution and Evidence in 2016. Suggestions for changes to the Priestly 11 have arisen from the judiciary, government initiatives, large scale reports, and individual academics. Given that the widespread appeal of the suggestions of individual academics is difficult to discern, the other sources of suggestions have exerted greater influence on the LACC and will be outlined below (Law Admissions Consultative Committee, n.d., p. 2-3).

Judiciary
In 2007, the Chief Justice and President of the Court of Appeal for the state of Victoria, with the support of the Chief Justices of Australia and the state of New South Wales, asked LACC to investigate practices for teaching statutory interpretation in law schools nothing that statutory interpretation should have a separate, substantive place in the curriculum. LACC discovered that statutory interpretation was largely marginalized in the law school curriculum but did not add it to the Priestly 11 due opposition from some law schools. LACC instead issued a statement about expected student outcomes for statutory interpretation in 2010 (Clara, 2017, p. 7-8).

LACC discovered in 2012 that the statement had little impact on the teaching of statutory interpretation and asked CALD to develop guidelines for law schools in this regard. A reaccreditation survey of one law school in early 2017 found that the school was not following the CALD or LACC statements and gave the school three years to change its practices to comply (Clara, 2017, p. 8-10).

In 2011, LACC faced more general criticism from the judiciary about the Priestly 11. The Chief Justice of the High Court of Australia indicated that the Australian approach to legal education was anchored to outmoded ideas about what lawyers need to know. He indicated legal education should be based on what lawyers need to do. His critique was consistent with accusations from other sources that the Priestly 11 were so demanding there was no time left to develop lawyering skills and professional values (Godwin & Wai-Sang Wu, 2017, p. 231-232). These critiques suggest a preference for law schools to focus on concrete tasks and ethics which are the basis of the PLT training competencies (Law Admissions Consultative Committee, 2017a).

Government Initiatives
In 2010, the Australian government funded the Australian Learning and Teaching Council (ALTC) to define minimum discipline-based learning outcomes for eight disciplines, one of which was law. Threshold Learning Outcomes (TLOs) were created for each discipline that defined the skills, knowledge, and professional capabilities, including professional attitudes and values, that are expected of a graduate from a certain program level in that discipline. The process of developing the TLOs engaged a broad spectrum of stakeholders, including professional bodies, accreditation bodies,

employers and graduates as well as academic institutions and teachers (Australian Learning and Teaching Council, 2010, p. 3).

Six TLOs were developed for the Bachelor of Law degree: knowledge, ethics and professional responsibility, thinking skills, research skills, communication and collaboration and self-management. They are aligned with the outcomes expected for any graduate of a Bachelor's program in the Australian Qualifications Framework (AQF). The TLOs are minimum requirements for Bachelor of Law graduates. The TLOS are not intended to be divided evenly into the curriculum for each to take up 1/6 of the curriculum. The ALTC anticipated that TLO 1 (knowledge) would take up more than 1/6 of the curriculum in order to cover the Priestly 11 (Australian Learning and Teaching Council, 2010, p. 4, 9-10, 12-13). The TLOs were adopted by CALD, but there was insufficient consensus among other members of the LACC for the TLOs to be incorporated into the admission standards for the profession established by the LACC (Clark, 2017, p.3-4; Huggins, 2015, p.265)

On its face, there are discrepancies among legal academics in discussing the nature of the TLOs. Galloway (2017, p. 13) refers to the TLOs as competencies. Clark (2017, p.4) refers to them as outcomes that are measures of academic competency.   Huggins (2015, p.266, 270) refers to them as learning outcomes that are indicative of a trend towards output, outcomes, and skills focused education and a shift away from content and inputs focused education. Huggins (2015, p. 283) links the terminology of competency and learning outcomes when noting that Canada has endorsed an outcomes focused approach to competency for the legal profession. The link between the TLOs and competency made in some way by all three authors suggests that the TLOs potentially offer an option for adopting a competency-based framework for the academic portion of legal education.

Reports on Law School Curricula
Two recent reports from large scale projects have also suggested modifications to the law school curriculum.

1.   Productivity Commission's *Access to Justice* Report (2014)
In 2013, the Australian national government asked the Australian Productivity Commission to investigate options for addressing the cost of legal services to improve access to justice (Productivity Commission, 2014, p. iv-vi). One of the Commission's recommendations was to determine the ongoing need for the Priestly 11 and explore options to teach the full spectrum of dispute resolution options along with the ability to match non-adversarial and non-court dispute options with appropriate disputes. The Commission also suggested assessing the merits of increasing clinical legal education in university or PLT (Productivity Commission, 2014, p. 254).

2.   *The Future of Law and Innovation in the Profession* ('FLIP') Report of the Law Society of New South Wales (2017)
In 2016, the Law Society of New South Wales established the FLIP Commission of Inquiry to better understand the changes occurring in the legal profession and generate recommendations to enable lawyers to adapt to those changes. The findings of the Commission are based on the testimony of 103 witnesses before the Commission as well as written submissions and separate interviews. The Commission was composed of lawyers working in various sectors, a senior court official, a legal academic, and a technology expert and most of the witnesses work in the legal field (FLIP, 2017, p. 2, 107-111).

The Commission determined that the existing aspects of the law school curriculum should be maintained. Students still need to learn traditional black letter law areas of knowledge and lawyer skill sets linked to critical thinking, problem solving and self-learning skills that are part of the current

law degree. The Commission could not identify any content to remove from current law degrees, PLT, or CPD and indicated that the additional areas of knowledge and skill identified by the Commission must be added to the existing learning content. (FLIP, 2017, p. 77).

The Commission identified seven areas of skill and knowledge new lawyers will need in addition to the existing curriculum: technology, practice-related skills (collaboration, advocacy/negotiation skills), business skills/basic accounting and finance, project management, international and cross-border law, interdisciplinary experience, resilience, flexibility and ability to adapt to change (The Future of Law and Innovation in the Profession Commission of Inquiry, 2017, p. 6). Clark (2017, p. 4-5) is critical of the Commission because law schools and PLT cannot manage teaching more content on top of existing content. Clark (2017, p. 4-5) advocates for prioritizing of learning and a reimagining of the possible options in a continuum of learning for teaching all of the content identified by the Commission.

Interestingly, the Commission does not use the language of competencies when describing the additional learning law students require. However, some of the identified areas, such as practice skills, align with the competencies for the PLT, raising a question as to why the same phenomenon are conceptualized differently for different settings.

Conclusion

Although Australian states/territories have been using an entry-level competency framework for PLT for almost two decades, there is still a robust debate in the country about the appropriate role of competencies in preparing new legal practitioners and the specific competencies that should be prioritized. The Australian experience suggests that achieving consensus is challenging regarding the definition of the concept of competency and the necessary evolution of competencies in response to changing circumstances.

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PART 5: APPENDICES

Appendix 1:   Roundtable Events: Structure and Feedback

Introduction

At the meeting of the Law Society of Ireland's Education Committee on 1 March 2021, it was decided that the next step in the development of a Competency Framework would be to invite a wide range of stakeholders to three roundtables. These roundtables took place on 25 May, 8 June and 15 June 2021. The structure of the events, their purposes and the feedback obtained is set out below. All responses have been anonymised.

Feedback: Focus Group 1 – 25 May 2021

Structure of Roundtable

	Item	Format	Time (minutes)	Leader
1	Introduction/background to project	Plenary	0-15 (15)	Attracta & Jenny
2	Discussion in small groups then plenary around purpose of CF (Background Info doc) and how participants anticipate it could be used	Breakout rooms	15-35 (20)	Small groups to have chair & scribe / rapporteur
3	Report back to plenary	Plenary	35-45 (10)	Jenny
4	Present the draft CF doc, explain structure, introduce concept of global standard	Plenary	45-60 (15)	Paul
5	Discussion in small groups then plenary around detail of the CF, what would they change/delete/add; discussion around global standards	Breakout rooms	60-80 (20)	Small groups to have chair & scribe / rapporteur
6	Report back to plenary	Plenary	80-90 (10)	Jenny
7	Summary of discussions	Plenary	90-97 (10)	Paul
8	Final words	Plenary	97-100 (3)	Attracta

Questions for 1st breakout session

1. How could this Competency Framework be of use in your workplace?
2. What kind of Competency Framework do you think the profession needs?
3. Do you agree that the day one Competency Framework should be the framework for post-qualification learning?
4. How do you think the Competency Framework should be integrated with pre-qualification learning?

Questions for 2nd breakout session

1. Is the structure of the Competency Framework helpful? If not, how would you improve it?

2. Are there any competencies that you think should be included, removed or amended?
3. Is there too much detail or not enough detail?
4. How would you describe the level of competence to be expected at the point of qualification?

Feedback from 1st breakout session

1. How could this Competency Framework be of use in your workplace?	2. What kind of Competency Framework do you think the profession needs?	3. Do you agree that the day one Competency Framework should be the framework for post-qualification learning?	4. How do you think the Competency Framework should be integrated with pre-qualification learning?
Aspirational!	As touched on by others a tiered approach would be best	Mix of in-office & Blackhall experiences.	Must reflect evolving levels of competency
Current Competency Framework already in my firm	A flexible approach	How is it measured?	That is Blackhall's role
Absolutely but would need to be adapted	All encompassing	Who will measure it?	Deeper - Training and in office
Perhaps – as a tiered approach	Skills in legal side	Broad range	Improve communication
Aspects of this could be adopted	A tiered CF - as per SRA	Flexible	Inspirational
Recruiting	Inspirational - career development		Reaching milestones
Recruitment process	Introduce nurturing		Integrated post qualification role for firms
To show career progression	Professional ethics		Reaching and learning within
Justifying hiring	Firm's standards		Have those necessary competencies as a standard
Advancing corporate setting	Centre of core skills of solicitors		
Using for Appraisals	Professional relationships emphasis - trust with your client		
Aspects - for certain types of practices	Their individual contribution to profession		
Mindful of different firms' capabilities -	Personal integrity with colleagues & third parties	All groups agreed it should be a combined framework	

large firms/ sole practitioners			

Feedback from 2nd breakout session

5. Is the structure of the Competency Framework helpful? If not, how would you improve it?	6. Are there any competencies that you think should be included, removed or amended?	7. Is there too much detail or not enough detail?	8. How would you describe the level of competence to be expected at the point of qualification?
Too granular level of detail	Integrity and honesty	Too granular detail for some of us	Starts with Blackhall training
How will it be graded or marked	Trainer exposure skills required/ client care firm would feed into that	Not enough detail for others in my group	Building all the way through their development
Firms' awareness and commitment	Practical Skills development	Mindful of different firms' capabilities - large firms/ sole practitioners	Work in progress important to recognise that
Trusted advisory for trainees	Professional conscience	Too much detail	
Integrated into Blackhall Place training	Self-awareness	Granular or headings	Yes, minimum years post qual. exp. doesn't necessarily relate to professionalism
Change away from the books	What is expected of them		Different competencies for different areas of practice
Settings we don't achieve; what is guidance and what is core obligation	Communication to clients and others		Professional communication skills
Flexibility - allow for evolution	Attention to detail		Writing and drafting
Tiering	Practical legal skills		Level of assessment
What items are mandatory/ aspirational?	Practical professional skills		Right of audience
	Technical training piece		Concerned it should be used across the practice
	Highest integrity		Their understanding of that qualification
	What is expected/ required of them		
	Understanding		

5. Is the structure of the Competency Framework helpful? If not, how would you improve it?	6. Are there any competencies that you think should be included, removed or amended?	7. Is there too much detail or not enough detail?	8. How would you describe the level of competence to be expected at the point of qualification?
	Capable of meeting firm's standards		
	Professional ethics standards		
	conflicts of interest		
	Professional communication		
	Analysis core to any solicitor		
	Consider their contribution to the legal profession		
	contribute as aspirational to give something back as they go through their careers		

Extracts from follow up emails

1. I am just sending a quick email subsequent to the roundtable just now in relation to the competency framework- the session was really interesting in terms of us all reflecting on our legal practice.

   I was on team 3 - and we did not have time to feedback - but one of the issues we discussed was how professionalism as a competency could be assessed or determined. It seemed to the group that what was included in professionalism read more like values, which may be harder to quantify in an objective standard. We all thought that those values were extremely important and very valid to include in a competency framework- but there also has to be a way to educate solicitors in those values and a means to ensure that those values are transferred over into practice and are demonstrated. We thought the risk was that solicitors would say that they adhere to these competencies of professionalism but there might not be a means to actually test whether this was so.

   The other point made was that any competency framework would need an introduction and rationale, so that solicitors and others know exactly how it is to be applied and what to expect.

   Good luck to you and colleagues in this valuable work and thank you for the invite.

2. Our group felt that some of the competencies in the first set ('Professionalism') were more aspirational and difficult to evidence. Eg, a commitment to public service. We also felt the level of expectation for day one was extremely optimistic in terms of ability.

3. Dear Attracta,

Well done on chairing a very informative discussion on the above. I note section 13 of the Legal Services Regulation Act 2015, ("LSRA"), and I note that that the LSRA has been commenced in its entirety. It ushers in a brave new world in which the Legal Services Regulatory Authority ("the Authority") now exercises many of the powers and functions, heretofore exercised by the Law Society. This includes regulation of education ("including on-going training"), s.13 states that the Authority may "keep under review and make recommendations to the Minister" … "the policies of the Law Society in relation to the admission of persons as solicitors…" and in relation to "…(iv) professional codes". I note that s.13 (2) (ii) refers to curriculum arrangements for the provision of the following competencies: legal ethics, negotiation skills, alternative dispute resolution and advocacy. It would seem that you are, as Head of Professional Training, totally cognisant of these competencies. It seems to me that the issue of competencies referable to a practising solicitor, may be more complex. In this respect I agree with your view that any set of competencies must be of help to a legal practitioner. Any set of competencies which are too prescriptive may lead to a tiered profession and I am not sure that the profession would welcome this. In this respect, I note the comment in paragraph 3 of the Summary of Literature for this Competency Framework project: "Rigorous research about competencies of solicitors in most jurisdictions is substantially lacking". This may be that in our jurisdiction as in others, the commercial demands of the market and the client operate to set standards of efficacy and efficiency in the profession.

Focus Group 2–8 June 2021

Structure of Roundtable

#	Item	Format	Time (minutes)	Leaders
1	Introduction/background to project	Plenary	0-15 (15)	Attracta & Jenny
2	Present the draft CF doc, explain structure, introduce concept of global standard	Plenary	16-30 (15)	Paul
3	Discussion in small groups around questions set out below	Breakout rooms	31-70 (40)	Small groups to have chair & scribe / rapporteur
4	Report back to two plenaries	Plenary	70-85 (15)	Jenny, Attracta; Rachael, Paul
5	Final words	Plenary	97-100 (5)	Attracta

Questions for breakout session
1. What kind of Competency Framework do you think the profession needs?
2. How could this Competency Framework be of use in your workplace?

3. How do you think the Competency Framework should be integrated with pre-qualification learning?
4. Is the structure of the Competency Framework helpful? If not, how would you improve it, eg add items, delete items, re-arrange it?
5. How would you describe the level of competence to be expected at the point of qualification?

Room 1
1. CF should be applicable in all circumstances;
2. Very useful for hiring particularly for in-house HR who are dealing with various roles. Very useful generally in determining what we are looking for in hiring, marking progression and moving up the ranks;
3. Recognised difficulty with assessing non-core subjects but recognised the importance of assessing skills (not necessarily by exam but maybe by observation. Training manager should be involved in assessing in addition to PPC;
4. CF needs to be accessible. Benchmarking would be useful e.g. what level should they be at a point in their career. Item 3 should be given greater priority and moved to 2 to reflect the need for your colleagues to be professional;
5. Purposes include benchmarking…when they are being employed, being sued! etc.

Room 2:
- CF is very important in setting out the standard but wording might not be so clear if not a lawyer. Recommend simplifying it e.g. personal integrity changed to honesty.
- Some areas were not included and should be: management of a business (risk, financial…), cyber security, managing data, confidentiality, sustainability, green agenda, CSR.
- Use of technology is not a separate part of being a solicitor and should be rephrased.
- There should be a guide to simplify it.
- All solicitors should start with the core legal knowledge e.g. cannot be an aviation lawyer without contract law. This should be renamed "pillars of knowledge"

Room 3
1. Positive. It should be adaptable and become a daily reference guide;
2. Excellent roadmap and handbook;
3. It will add to the already excellent PPC training but will be most benefit to the in-office training;
4. Excellent structure.
   Here are the suggested improvements:
   2.5: what is transactional research?
   3.4: duty to clients should be highlighted
   3.4.1: identify client context (what does it mean)
   1.1/1.4: language a bit lofty. Should be more practical. (

Room 4
- Stressed the importance of identifying what applies to whom.
- CF should come with a glossary of terms e.g. professionalism so that there is a common understanding of concepts.
- Important as a framework for PPC/Diploma's but also very important for in-office training. There should be more integration between PPC and offices and CF will assist this. Going

forward there should be a blended landscape and use of technology to check in with trainees in office. Assessment should be integrated.

- Teaching the technology part: need to consider how you would creatively/innovatively use technology.
- Practical running of a business should be included in framework.
- Need to include self-care, empathy, resilience etc.
- Why specialised knowledge and skills? Should be core not just specialised.
- How do we assess. Need to get a balance and not over assess and no learning.

Room 5

1. CF is excellent as a Day 1 benchmarking tool;
2. Useful for training programme design and for assigning work;
3. Can be built into fused PPC. Can also be used for in-office training;
4. It is helpful but needs guidance for implementation;
5. The following should be added: Solicitors Accounts, rules of court, costs and billing, drafting without precedents, teamwork, disability, pro-bono, legal aid. Also what does 4.2 mean. And include honesty.

Follow up emails

1. As our discussion is still fresh I wanted to provide more colour on one particular conclusion of our working group, which I would invite you to share with Prof. Maharg as he works to redraft the framework.

   The key difference between the legal profession and other professions is that we are part of the administration of justice, which is regulated by the constitution. Other professions can all be regulated by the executive and legislative branches but there is a limit on the executive and legislative control of lawyers. Therefore, Prof Maharg's point about "the interests of justice in society" was not at all arch or (as one other contributor stated) lofty – it is at the very core of what we do. Perhaps it could be rephrased to be "The position of lawyers as an integral part of the rule of law and administration of justice."

   In Ireland (and the UK) there is constant pressure on the rule of law and administration of justice, viz. the consistent practice of the State in attempting to fix legal fees at surreally low levels and its pressure to inhibit the discretion of the Courts as to level of awards in personal injury matters. (Or in the UK, the illegal proroguing of Parliament and the steps taken to breach international law by the Executive.)

   Hence the importance of emphasising the importance of the rule of law and elevating Professional Ethics and Standards to No 2 in the list. For 8 years I sat on the Complaints and Client Relations Committee, 3 of those as Chair. More often than not, the solicitors that came before the CCRC were either unaware of the existence of "A Guide to Good Professional Conduct for Solicitors" or, if they were so aware, they were not aware of its contents. Part of the problem is the lumpy title of the Guide – far better that it be called the "Solicitor's Code of Conduct": then it might be taken more seriously. Interestingly, the in-house solicitors on out group were keenly aware of its contents, in light of the pressures on their independence they

face when employed by their only client. They noted however that the Guide had been covered at PPC but not to any degree of depth.

Finally, an anecdote. I qualified in 1981 under the pre-PPC system, where we only attended lectures in Blackhall Place but then obtained the bulk of our training in our offices. However, about 6 months after we had headed into practice our cohort were invited back to the Law Society for a day's set of lectures on ethics and practice organisation matters. Maybe because it was the only time that my Blackhall experience resembled what a PPC day might be like, it stuck in my memory. That said, I would see a great step if we brought back qualifiers for a compulsory day of ethics post-qualification, so as to reinforce its importance to the solicitors' profession.

2. I thought you might find the attached document interesting. It's a Universal Competency Profile for In-House Counsel developed by a group called In-House Counsel Worldwide which is a grouping of national in-house counsel bodies (including the Commerce and Industry Group in the UK (the equivalent to our In-House Committee in the English Law Society) and similar bodies in Canada, New Zealand, etc.

3. I am particularly interested to see that the Competency Framework would make sure to encompass the particular needs of the in-house community.

Focus Group 3

Structure of Roundtable (same as Focus Group 2 but with Alan Treleaven chairing)

	Item	Format	Time (minutes)	Leader
1	Introduction/background to project	Plenary	1100-1115 (15)	Attracta & Alan
2	Present the draft CF doc, explain structure, introduce concept of global standard	Plenary	1115-1130 (15)	Paul
3	Discussion in small groups then plenary around detail of the CF, what would they change/delete/add; discussion around global standards	Breakout rooms	1130-1210 (40)	Small groups to have chair & scribe / rapporteur
4	Report back to plenary	Plenary	1210-1230 (20)	Alan
5	Final words	Plenary	(3)	Attracta

Questions for breakout session

1. How could this Competency Framework be of use in your workplace?
2. What kind of Competency Framework do you think the profession needs?
3. How do you think the Competency Framework should be integrated with pre-qualification learning?
4. Is the structure of the Competency Framework helpful? If not, how would you improve it?
5. Are there any competencies that you think should be included, removed or amended?

Feedback from breakout session

Room 1

Q1. The framework is helpful but important that it focuses on skills rather than knowledge.

Q2/3. It will assist at pre-entry stage i.e. Universities can develop training and ensure it integrates with the professional training but needs to ensure any relevant training is recognised at professional training stage.

It will help firms identify needs and develop ongoing CPD framework. It might help clients tender for particular legal services.

LS should map CF against PPC structure so they know what they have done.

Q4. Risk management is not addressed. It should focus on what is expected of trainee at qualification stage. There should be identification of what we expect them to have at Day1.

Public services, justice interests not suited to professionalism heading should be moved to another heading. What is transactional research?

Room 2

Q1. Very positive. Need to add some meaning to Law & Society element. Our place in the world is a good starting point. Need to add a business understanding. It will manage client expectations.

Q2/3. Need to keep it manageable with a check list approach. It should enable trainees to manage their own training journey with their training manager. It should lead to an improvement in standards. Transferable skills are important not just the technical skills so that they can be transferred outside the profession.

Q4/5. Recommend using an online portal i.e. online learning diary with short videos/quizzes so trainees can continue learning on the go. Must be linked with the PPC. The standard of assessment must be high and very important to train the trainer e.g. the training solicitor.

Follow-up email from Room 2

- V positive about it generally – don't make it too large! It cannot serve every purpose for everything you do.
- Getting the divide between the law school and the professional training right is important.

Q1

- List is very good – well designed in a general sense & a positive leading move to standardisation
- Could we add in some understanding of the role of law in society – Irish Rule of Law example – the need to understand our place in the world
- Nothing about generating business & management skills & teamworking & understanding client service and expectations – understanding perspectives
- General business understanding – how a business works and the skills needed
- Also how little lawyers understand themselves and the impact of trauma on clients and on their advisors (family law, refugee advice, impact of trauma) - minding oneself and understanding how.

Q2

- helping to hire people and understand their own job and direction from the outset – this is currently patchy from firm to firm
- Keep it manageable and simple
- Could we present it as a checklist for the training journey? Online?
- If people go outside of private practice – all of these skills are cross transferable
- Emphasize the skillsets that are developed – which are very broad and open opportunities for trained solicitors to do more than just private practice
- It can help enhance personal confidence.

Q3

- A checklist approach, with the trainee "owning" their own training experience as part of a training plan (ideally online).
- Check in with training solicitor/manager every 6 months maybe
- Each module in technical training can be enhanced with this roadmap sitting on top of it
- Helps add a lot of clarity and standardisation across the profession and within firms
- Allows credit and comparison – what is measured can be monitored, what is monitored can be improved.

Q4

- Checklist format might work best – maybe even an electronic "dashboard" type experience – maybe videos could be online to allow trainees access to resources.
- It should be accessible online live – and allow for chat sharing maybe? Help trainees help their colleagues – if they need
- Great opportunity for the Law Society to show leadership here

Q5

- Ticking every box may be very difficult – but we should strive for that. Self-assessment with training solicitor.
- Making it all mandatory may be hard to do but we need to use this as an opportunity to raise standards.
- These skills need to be as valued as technical expertise.
- There should be a minimum pass level – and maybe the bar should be high.
- Could we have "learning diaries" as part of the portal – maybe have a video in each section with a quiz? 1 hour session with modules – and then a multi choice quiz at the end.
- Create scenarios/quiz items that link with what happens in PPC1 and PPC2 – connect it all so that students can have "eureka" moments where they get to apply learning from PPC to practical scenarios (links to Q3).

- Educating the training solicitor on the application of the model will be very important also – trainees will take their lead from the boss who must be educated and "buy in" to the process. This could be a CPD option for the training solicitor – need them to buy in. V important.

Room 3
- Great to have competencies in writing so they can be assessed and to demystify them.

- Important to recognise that the training PPC is not only in the LS and the shared documentation will embed this in firms so they know what they are being taught.
- Concerns are:
  - should get feedback from clients' experiences
  - Professionalism is difficult to define. Just words e.g. what do terms mean
  - Need more detail
  - How are they assessed in practical terms
  - Avoid tick-boxes
  - Need business skills
  - Add to 2.4: attention to detail

Follow-up email from Room 3:
- Good to see clear criteria being articulated. It will give students clear goals to work towards and will also help firms to manage their expectations re. their trainees. It would be good to add in the perspective of the consumer too.
- It is important that the competency framework is embedded at firm level. The risk is that the focus will be on Day 1 competencies with the ongoing CPD going by the wayside. It is also worth noting that some firms have more developed training and CPD programmes so this difference in resourcing is important to acknowledge and the Law Society needs to work towards a common standard.
- Firms will need to receive practical guidance in terms of how trainees demonstrate that they have achieved/are on the way towards achieving a competence. Sample 3 (p.8, Background document) was particularly useful. Also at what stage trainees should be hitting/about to hit different competencies. It would also be useful for firms to know how competencies are being taught. As partners in the training of future solicitors this is essential as they will likely have a role in assessing/logging the attainment of competencies.
- More detail will be needed to elaborate on the content of the competencies. Many are intangible at present. This is particularly evident re. the concept of professionalism. While it is positive that an effort is made to define what constitutes professionalism under heading 1, the definition is lacking. For example, reference is made to "Diversity, Equality and Public Service" but there is no verb action accompanying these words. Are solicitors to respect these? Commit to advancing them? Given the key importance of professionalism to the rest of the competencies, much more detail is needed here. The risk with a poorly defined understanding of professionalism is that we fall back on gender/race/class biases.
- Need to be aware of the possible tension between different types of firms and their understanding of what base-line competencies are.
- In terms of what could be added, there's no reference to business skills. Practitioners will be involved in the running of businesses so they will need to develop competencies in these areas too. It would be worth adding reference to "attention to detail" in section 2.4 as this is common feedback for trainees. Attention to detail is not confined to the accuracy of the law provided but is also evident in how it's presented (grammar/spelling/punctuation). Finally, more soft skills need to be included. It was noted that humility/awareness of one's own limitations is an important competence to have and essential so that one knows to seek assistance where needed. This point was included in no.3 of sample 3 (p.8, Background document).

- Q1. Important for the continuing development of the practitioner not just Day 1.
- It must be flexible and adaptable and keep up with pace of current legal environment.
- It should not be linked to professional negligence.
- Q.5 There is an on-going requirement to ensure skills and knowledge are up-to-date but some requirements might be too burdensome e.g. technology piece for older solicitor e.g. need flexibility.
- Level of competency in say advocacy may not be relevant across the board.
- Q2/3. It should guide programme design at university level and across modules preparing graduates for professional programmes.
- Need to clarify what was under professional relationship heading – should focus on confidentiality

Follow-up email from Room 4:

1. What kind of Competency Framework do you think the profession needs?
   Should be:

   1. Needs to be all encompassing - challenging to cover everything…
   2. Different career paths
   3. Changing needs over career
   4. Meaningful
   5. Recognise Transferable skills
   6. Recognise experiential learning
   7. Sufficiently flexible/adaptable to respond to the changing legal environment

   Shouldn't be:

   1. Too vague
   2. Too burdensome - List of elements shouldn't be too broad if ongoing requirement for all practitioners
   3. Shouldn't be one size fits all
   4. Be linked to a professional's competence – prof neg / careful re becoming *hostage of fortune*

2 &3. How could this Competency Framework be of use in your workplace?

Reiterated the feedback from group 1 about pre-entry:

- guiding design of programme and modules at undergraduate
- common themes across modules
- developing group and team work
- experiential learning into curricula
- Guide internship
- Embedded across the full continuum of education
- The jump to traineeship is very different
- Integrate skills earlier
- In house learning and development touching on those key points

- Focusing continuing education programmes
- Changing nature of the legal environment

4. Is the structure of the Competency Framework helpful? If not, how would you improve it, eg add items, delete items, re -arrange it?

- the technology side – needs to be revisit.
- professional relationships – integrate guide to professional conduct, interaction with other branch of legal profession,
- Knowing when to seek help – awareness of limitations/current competency
- Explicit reference to confidentiality

5. How would you describe the level of competence to be expected at the point of qualification?

- *use of technology* – senior solicitor may not engage with the technology / firms with legal technology teams / range in levels of proficiency required/expected. / pace of change / a specialised skill set in its own right
- Level of competence depends on the career path… eg importance of advocacy

Attendees

	Organisation	Role of Attendee
1	William Fry	
2	William Fry	
3	Eversheds Sutherland	
4	Byrne Wallace	
5	Dillon Eustace	Partner
6	LK Shields	HR Manager
7	Walkers	Partner
8	Leman	
9	Leman	
10	Leman	
11	Carlow Bar Association	President
12	Laois Solicitors Association	President
13	UCG	Dean of Law
14	Trinity College Dublin	Head of Law
15	UL	Director of Undergrad Studies
16	Kings Inns	Dean
17	Dublin Rape Crisis Centre	CEO
18	Property Registration Authority	Chief Examiner of Titles
19	UCD	Dean of Law
20	DCU	
21	CDU Committee	Member
22	Maples & Calder	

Appendix 2: Proposed next steps, following Finuas Skillnet Roundtables, May/June 2021

Introduction

At the meeting of the Law Society of Ireland's Education Committee on 1 March 2021, it was decided that the next step in the development of a Competency Framework would be to invite a wide range of stakeholders to three roundtables. These roundtables took place on 25 May, 8 June and 15 June 2021. Following discussion with LSI and LSFS of the responses below, the research team produced:

1. A revised *Competency Framework* (CF).
2. A *Report* that sets out the rationale for and methodology of the development of the CF (R).
3. A *Guide* that describes many aspects of implementation of the Competence Framework, designed to enhance and support use of the CF (G). Given the detail and focus of the *Guide* it was later decided to reserve it for use with educators.

Our responses to all the feedback that summarises the amendments we made to the CF are set out in the table below, pp.2-7. This is the final agreed table, which was used for the purposes of drafting the final versions of CF, R, and G.

Responses

	Comment	Response	Action
1*	Reflect evolving levels of competence, possibly tiered approach; balanced against concerns about it being used for professional negligence cases	If there are different tiers of competence the temptation is for them to be used for regulatory purposes.	Suggest only develop a 'standard' for day one qualified solicitor. This issue will be addressed in the report and guidance.
2	Emphasise legal skills	Agreed. The structure is already very skills focused.	Address the issue in the R.
3	Make it inspirational in tone, aimed at career development; concerns raised about subjectivity of some of the competencies, others wanted the CF to address individual contribution to profession, personal integrity etc	This is in conflict with other comments who wanted the competencies to be assessed, realistic and not set too high	Balance to be struck given contradictions. Need to articulate vision for how the CF will be used.
4	Considerable support for a combined framework: Day 1 + CPD	Agreed.	G. will articulate how it will work.
5	Essential skills should be accompanied by standards statements	Agreed. See 1 above.	
6	Integrity and honesty – too granular.	We don't agree.	To be addressed in the R.
7	Assessment of skills to be built throughout one's career; Assessment of skills is what matters, not time that is served in any sector	Agreed.	Need to articulate our expectations about how the framework will be used post-qualification in the G.
8	Aspirational aims to include giving back in educational terms as lawyers proceed through their careers	This was one view.	To be addressed as a culture issue only in R. but not in the CF
9	Very useful generally in determining what we are looking for in hiring, marking progression and moving up the ranks – possibly refer to this	Agreed. See 7.	
10	Recognised difficulty with assessing non-core subjects but recognised the importance of assessing skills (not necessarily by exam but maybe by observation. Training manager should	This is really a question for LSI and how they anticipate the relationship with training firms will operate.	To be addressed in R. & G.

	Comment	Response	Action
	be involved in assessing in addition to PPC		
11*	Benchmarking would be useful e.g. what level should they be at a point in their career. Standards must be high and trainers trained	See 1 above	
12*	Simplify wording, e.g. personal integrity change to honesty.	Don't agree. Who is the target audience? Solicitors or lay clients?	We can do a Plain English check.
13*	Some areas were not included and should be: management of a business (risk, financial…), cyber security, managing data, confidentiality, sustainability, green agenda, CSR.	Green agenda/sustainability/CSR to be addressed in non-core curriculum and CPD offering (would require policy from LSI to adapt for this)	Will make sure the other areas are covered in CF
14*	Use of technology is not a separate part of being a solicitor and should be rephrased.	Agreed	We can integrate this
15	There should be a guide to simplify it.	See 7	
16*	State the relationship with core legal knowledge e.g. cannot be an aviation lawyer without contract law. This could be renamed "pillars of knowledge"	Agree legal knowledge section should be core not specific. Should it be pillars of knowledge?	Change to core legal knowledge.
17	Should be available as a daily reference guide, roadmap and handbook	Agreed.	
18	It will add to the already excellent PPC training but will be most benefit to the in-office training	See 10 above.	
19*	Clarify what transactional research actually means	Agree	
20*	Include and clarify duty to clients	Agree	
21*	Clarify and identify client context	What does this mean?	
22*	Reconsider the language of professionalism outcomes	See 3,6,8.	We will redraft with alternatives.
23	Which outcomes apply to whom in the profession?	See 7	To be covered in G.
24	Include a glossary of terms e.g. professionalism so that there is a common understanding of concepts.		Glossary for acronyms and abbreviations and brief explanations. Explain more

	Comment	Response	Action
			complicated concepts such as professionalism in the guidance.
25	More integration between PPC and in-office training	See #10	
26	Recommend a blended landscape and use of technology to check in with trainees in office.	See #10	
27	Assessment should be integrated with learning; also concerns/ questions about how it would be assessed, suggestions included Observation? Learning diaries? Client feedback?	Agree see #10, need to articulate how it will be integrated into PPC	Include in G.
28	Teaching the technology part: need to consider how you would creatively/innovatively use technology.	This is one for implementation doc.	Include in G.
29*	Practical running of a business should be included in framework.	Agree.	Include see #13.
30*	Need to include self-care, empathy, resilience etc.	Can include in CF	
31*	Why specialised knowledge and skills? Should be core not just specialised.	Agree. Amend. See 16	
32	Assessment should be balanced between over-assessment and learning without assessment	See #28 for implementation/assessment stage.	To be included in G
33*	CF could be excellent as a Day 1 benchmarking tool	Agree see #1	
34	CF could be useful for training programme design and for assigning work		To be included in G
35	CF could be built into fused PPC. Can also be used for in-office training	See #10.	To be included in G.
36	Guidance for implementation of the CF is required	Agree.	
37*	Consider adding outcomes for the following areas: • Solicitors Accounts • Rules of court • Costs and billing • Drafting without precedents • Teamwork	Discuss with LSI	This is difficult to deal with because it goes beyond our remit in several ways. Much of it references content rather outcomes; and it's difficult to write outcomes for

	Comment	Response	Action
	• Disability • Pro-bono • Legal aid • Honesty • Business understanding (to understand client perspectives) • Generating business & management skills & teamworking & understanding client service and expectations – understanding perspectives • Also reflect on how little lawyers understand themselves and the impact of trauma on clients and on their advisors (family law, refugee advices, impact of trauma) - minding oneself and understanding how. • Humility, awareness of own limitations and know when to see assistance		content unless we have an indication of the level of content for specific content resources at different levels of competence. However we shall include business competencies, check how others are already incorporated, incorporate other aspects into self-management, ensure awareness of own limitations
38	Professionalism as a set of competence outcomes should be assessed.	Agree	See G.
39	Competence framework needs an introduction and rationale	Agree	See G. & R.
40	Professionalism as a set of competences is aspirational and could be difficult to evidence	See PM's response	See G. & R.
41	Level of Day One competence was very optimistic.	To be discussed. Need to consider where to pitch this.	General standard to be drafted as description. Reference to this issue in R. & G., for

	Comment	Response	Action
			this goes to the heart of the project. We should not merely be interpreting the past but describing the future of legal service provision in Ireland and its new standards. To that extent our document should be at once highly practical, pragmatic and visionary.
42*	Under Professionalism outcomes, rephrase 'the interests of justice in society' to 'The position of lawyers as an integral part of the rule of law and administration of justice'	Agree	
43*	Under Professionalism outcomes, elevate Professional Ethics and Standards to #2 in the list.	Agree	
44	Recommend assessment by qualifiers for a compulsory day of ethics post-qualification, so as to reinforce its importance to the solicitors' profession.	Not part of CF.	Discuss in R.
45*	Ensure that the needs of the in-house community are catered for in the Competence Framework.	Agree	We will review the in-house CF provided and integrate where possible; generally seek to ensure that CF accessible for a variety of legal settings
46	Suggested uses of CF could be: • Benchmarking/regulation • Recruiting/justifying hiring • Career progression/appraisals • Nurture/inspire • Training programme design tool • Developing transferable skillsets (if change legal setting or move out of law)		Include as per #7 above, as well as R. & G.

	Comment	Response	Action
	• Add clarity and standardisation across profession, within firms and within training providers • Demystify competencies • Guide internships/training contract		
47	Comments divided as to whether more or less detail required; also "don't make it too large, it can't do everything!	Noted: need to strike balance.	
48*	LSRA requires legal ethics, negotiation skills, ADR, advocacy to be covered		Noted: check they are adequately covered
49	How will firms be expected to use the CF? Some favoured a checklist approach, others definitely did not want a checklist approach.	To be discussed.	See Guidance.
50	What is status of core/non-core?	Possibly a reference to teaching on PPC – the issues matter less in CPD.	Create blueprint to map which of these competencies would be assessed on PPC and which on training contract; and which are non-compulsory
51	What is expectation for keeping areas covered by CF up to date	Regulatory question inevitably; and our documentation should align with LSI policy on the issue.	Explore in R. & G. See #4 and #7 above.

Appendix 3: Research Group Biographies

Alan Treleaven, Co-chair

Until mid-2020 Alan Treleaven was the Law Society of British Columbia's Director of Education and Practice, and before then was Director of Education at the Law Society of Ontario. He has had significant involvement in the Federation of Law Societies of Canada, including membership on several committees: National Admission Standards, Law Degree Approval, Mobility, CLE, and National Committee on Accreditation.

He has been a frequent teacher, legal skills trainer and presenter at courses and conferences across Canada, and in the USA, UK, China, Cambodia, Vietnam and Kenya. He is a member of the National Association of Bar Executives (USA) and a member and Past President of the international Association for Continuing Legal Education.

Before moving into the world of legal education, Alan practised civil litigation in Vancouver. He is now an Adjunct Professor at the Faculty of Law, University of Victoria in British Columbia.

Paul Maharg

Paul is Distinguished Professor of Practice – Legal Education at Osgoode Hall Law School, York University, Ontario, Canada; and part-time Professor of Practice, Newcastle University Law School, England. He is Honorary Professor of Law in The Australian National University College of Law, Canberra, where he was Director of the PEARL (Profession, Education and Regulation in Law) centre. Earlier, at Strathclyde Law School, he was Director of the innovative Learning Technologies Development Unit, as well as Director of the JISC/UKCLE-funded project, SIMPLE (SIMulated Professional Learning Environment).

He has published widely in the field of legal education, particularly in international and interdisciplinary educational design, and in the use of technology-enhanced learning. He has produced reports and worked with regulatory bodies in Scotland (Law Society of Scotland), England (SRA), Hong Kong (Law Society of Hong Kong), Australia (Law Admissions Consultative Committee, Victoria), Canada (Law Societies of Alberta, Manitoba, Saskatchewan, Ontario and Nova Scotia) and the Law Society of Ireland.

He is a Principal Fellow of the Higher Education Academy (2015), a National Teaching Fellow (2011), and a Fellow of the RSA (2009). He holds Visiting Professorships in Hong Kong University Faculty of Law, the Chinese University of Hong Kong Faculty of Law, and was 2014 Distinguished Professor of Teaching and Learning at Denver University Sturm College of Law. He is Honorary Vice President of the British and Irish Law Education Technology Association (BILETA) and Consultant Editor of the European Journal of Law and Technology. He blogs at http://paulmaharg.com. Full CV at http://paulmaharg.com/bio/ .

Jenny Crewe

Jenny is a legal education specialist with particular expertise in professional competency frameworks and assessment. She is currently advising the Chartered Institute of Legal Executives (in England & Wales) on the operationalisation of their new CILEx Professional Qualification and has previously advised the QC Appointments Panel on ways to improve their assessment of QC applicants. Whilst at

the SRA, Jenny led the development of the Qualified Lawyers Transfer Scheme (QLTS) and the creation of their Competency Framework.   Her current projects span legal apprenticeships, widening participation in higher education and helping law firms and chambers to prepare for forthcoming regulatory changes to professional education.

Angela Yenssen

Angela is now a lawyer working in Family Law in Toronto. Prior to this and during the first part of the Finuas Skillnet project, she was Research Assistant to the project, working largely on the Thematic Literature Review.

END OF REPORT