

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

Continuing Professional Development – Consultation Report

April 2016

The Bar Standards Board’s response to respondents’ views on the consultation paper on the proposed new Continuing Professional Development scheme

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Introduction

1. This report summarises the responses received to the Bar Standards Board's (BSB) consultation paper on Continuing Professional Development which was published on 3 June 2015. It also seeks to respond to some of the comments made by respondents and to demonstrate how the Board's policy position has evolved in light of the consultation.
2. The consultation was scheduled to close on 31 August 2015 but the BSB agreed to extend the closing date for the exercise to 4 September 2015. 84 responses were received. The original consultation report is available at;
<https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/future-bar-training/continuing-professional-development-%28cpd%29-reform/cpd-consultation/>

New CPD scheme pilot

3. The new CPD scheme pilot was run from January 2015 to March 2016.

Next Steps

4. The outcome of the consultation analysis and the review of the CPD pilot will be used to determine the final shape of the regulatory framework for the new CPD regime. A subsequent consultation on the CPD Rules will be issued in June 2016.
5. The new rules will be introduced as part of the Handbook further details of which will be available in the CPD new scheme Rules and Regulations Consultation.

Analysis of Consultation Responses

6. Of the questions asked 84 responses utilised the response sheet provided and 42 provided answers to all 9 questions;
 - 84 provided an answer to question 1
 - 77 provided an answer to question 2
 - 77 provided an answer to question 3
 - 82 provided an answer to question 4
 - 81 provided an answer to question 5
 - 80 provided an answer to question 6
 - 75 provided an answer to question 7
 - 56 provided an answer to question 8
 - 50 provided an answer to question 9
 - 3 provided a response in an alternative format. These were from larger membership bodies, the **Chancery Bar Association (ChBA)**, the **Inns of Court** and the **Legal Services Consumer Panel (LSCP)**. The **Immigration Lawyers Practitioners Association (ILPA)** responded using the consultation form.

Q1: Do you agree there should be no compulsory CPD activities for established barristers, but barristers must carry out a balance of activities?

Q1. Yes: 47 No: 35

7. Page 7 of the Consultation presented some of the problems of the current Established Practitioners Programme of CPD. In particular that it operated as a tick box exercise that was overly prescriptive. In addition research showed that encouraging and rewarding voluntary CPD activity was most effective. The Consultation Paper proposed that any new scheme should be focused and flexible in meeting individual barristers training needs.
8. A majority of respondents answered 'Yes' to this Q1. These respondents were positive about the proposals of the new scheme especially when compared to the current CPD regime. The current scheme effectively forced barristers to attend CPD courses even where they were not relevant simply to avoid non-compliance. Barristers noted that this problem was compounded by CPD activities not being cheap and it was also commented upon that the current 'one size fits all' approach to CPD was not useful.
9. Respondents noted that the prescriptive nature of the current scheme did not incentivise attending relevant courses;

“Much of the training under CPD is not attended at all (I have seen people register then walk away) or very little is learned. It has become an industry all its own and very expensive when from external providers.”

10. The **Immigration Law Practitioners Association (ILPA)** agreed that there should not be any compulsory topics for CPD. This was because there was great diversity within the profession which did not make CPD suitable for this kind of approach. The ILPA did suggest however that more guidance could be provided for barristers with regards to what topics they would be expected to cover in each of the four knowledge areas and what is meant by a balance of activities. They thought that the appropriate ratio of activities will depend upon the strengths and weaknesses of the barrister.
11. The respondents that answered No to Q1 expressed concern that there was not enough clarity in the provided guidance as to what was expected of barristers. In addition there was a desire for a system that provided more certainty.

This objection to the proposed system could be summed up by one barrister who stated

“A defined compulsory programme provides certainty of what is required, creates an objective standard, and is educationally rigorous and therefore encourages public confidence in the CPD requirement”

12. Other Consultation respondents were worried that the proposed new scheme would be too demanding and bureaucratic to be effective. In addition respondents expressed concern that an outcomes based approach to CPD wouldn't adequately deal with those parts of the Bar which were already currently failing to keep their knowledge and skills up to scratch.

Many respondents also wanted more explanation as to what was meant by 'balance of activities'

13. **The Inns of Court** noted that balance of activities could either mean that;

- A barrister should complete a variety of different types of CPD activities, lectures online courses reading etc

Or

- It could mean that a barrister needed to undertake activities spread across a variety of topics to develop different skills and knowledge in different technical areas.

The Inns said they disagreed with the latter interpretation.

14. Some respondents believed there should be mandatory CPD activities undertaken. In particular the **ChBA** suggested introducing a compulsory wellbeing section of CPD into the proposed or current requirements.
15. In the view of the **ChBA** there was a significant risk that removing a minimum number of hours would result in barristers doing less CPD.
16. **ChBA** said that concerns the BSB had about the relevance of CPD barristers undertook should be tackled directly by looking at the range and quality of online CPD on offer.

BSB Response

17. Apparent certainty of what is required is a benefit to a system but is not a single overriding consideration. Indeed under the current CPD regime certainty of hours incentivises barristers to focus on hours rather than the relevance of a CPD activity. The **LSCP** response (found at Q9) indicated that the current system does not inspire public confidence in the CPD requirements.
18. However the BSB has noted that there were consistent concerns about the need for further, clearer guidance, particularly with regard to what will be regarded as compliance and also how non-compliance will be managed. The BSB will be producing further guidance on the new scheme particularly with regard to the Planning phase and the BSB approach to supervision, non-compliance and enforcement.
19. The BSB does not believe that it would be useful to impose mandatory CPD activities across the profession for Established Practitioners. Rather the BSB believes that barristers are best placed to decide their specific training needs and development. A profession should take responsibility for its own learning and development, with the regulator providing a clear framework of guidance and support to that profession. The regulatory function should be to ensure they have made these decisions in a reasoned and focused manner.
20. The BSB acknowledges that the new scheme will require more effort from barristers at the beginning of the year by requiring barristers to formulate a specific plan of what the focus of their CPD is going to be. However this effort will be offset across the year in a number of ways;
 - i. There are no compulsory elements including accredited hours that need to be obtained.
 - ii. Barristers can potentially do fewer CPD hours.
 - iii. All the CPD activities a barrister does will be relevant to their practice. There is now no reason for barristers to spend time or money on irrelevant CPD courses just to ensure that they undertake a prescribed number of CPD hours.
 - iv. Barristers have more flexibility in the kinds of CPD that can be undertaken. For example legal writing is now not restricted to only 4 hours.

21. In relation to balance of activities, to clarify, this means that the CPD activities that barristers carry out should be completed in a variety of formats. For example reading, seminars, online courses and lectures (the Inns of Court preference).
22. The BSB hopes to mitigate any issues of quality by encouraging a variety of CPD activities to be undertaken rather than barristers relying on one form of CPD or even one CPD provider.
23. The BSB concerns with regard to online courses was not about their quality but ensuring that that barristers did actually undertake these activities and in ensuring the activities undertaken were relevant to their area of practice. These concerns could be alleviated by having barristers undertake a range of activities and by incentivising barristers to only undertake relevant CPD

Q2: What do you think will be the challenges that barristers will have to face in the new CPD scheme? What more could the BSB do to help barristers to meet those demands?

Q3: Do you think the Guidance in Appendix A provides adequate support to barristers by outlining what the new approach to CPD requires? Please explain your views.

Q3 No 50 Yes 23

24. Pages 10-11 of the Consultation paper explained what would be expected of barristers under the new Scheme. Barristers should maintain CPD records continuously and reconcile them annually. This would mean planning their training needs and explaining how the different CPD activities completed would meet these needs.
25. Operational details of the new CPD scheme were included in Appendix A of the Guidance. 26.
26. The majority of respondents saw a number of different challenges facing barristers under the proposed new scheme. In addition a majority of respondents did not think that the guidance in Appendix A provided adequate support.
27. Respondents also expressed confusion as to the meaning of terms such as 'balance of activities.' again in this context please see paragraph 21 for the BSB response.
28. There were a number of key themes and concerns raised in the answers to questions 2 and 3. We have addressed and responded to each of these themes individually below.

Planning and reflection

29. A primary concern was what exactly was expected of barristers during the Planning and Reflection stage of the proposed new CPD scheme.
30. The **ChBA** had concerns about the amount of time barristers would have to spend planning and evaluating their CPD. They also wondered how setting learning objectives would apply for very senior practitioners.
31. The **ChBA** also objected to the principle of setting individual learning objectives for barristers, they commented that

“The notion of “identifying learning objectives” on a per barrister basis in advance is quite meaningless in the CPD context. In short, courses and seminars have “learning objectives” – people do not.”

BSB response

32. The BSB response to concerns relating to what is expected during the planning phase this is answered fully in the response to Q4 and Q5 which directly addresses these issues.
33. The BSB would not agree that people cannot have learning objectives. The current pilot that is being run has demonstrably shown that barristers can set and work towards specific learning objectives.
34. There is perhaps a question of terminology. People may have goals they want to achieve. Identifying how they want to go about achieving this goal and why is effectively a learning objective.
35. Learning objectives are flexible in the goals they are hoping to achieve and how the barrister can go about achieving those goals
36. It may be challenging for senior practitioners to set relevant learning objectives. However senior practitioners may ultimately have less overall CPD that they need to complete. As has been previously stated it is individual barristers who are best placed to determine their training needs. The BSB is principally interested in looking at how the barrister has justified that decision, that they approach their decision in a formal way and that they follow through with what they say they are going to do.

Assessment and compliance

37. Another concern was with assessment and compliance. Specifically the uncertainty of how a barrister’s record card would be assessed and what would constitute compliance.
38. This concern was particularly expressed that compliance was only guaranteed after assessment rather than meeting a completely objective static standard. This was a concern shared by the **ChBA** and the **Inns of Court**.
39. The Inns worried that a barrister may only complete a very small number of CPD hours in good faith but would nonetheless face disciplinary action.
40. The Inns of Court suggested that 12 hours should remain a benchmark number of hours that would ensure compliance under the new scheme

BSB response

41. The BSB would disagree that there should be a minimum number of hours that would automatically ensure compliance under the new scheme. This would be directly contrary to the principle that the CPD completed should be relevant and outcomes focused. It would undermine the purpose of the planning statement and reflection stage of the proposed CPD scheme.
42. A barrister who had completed a particularly small number of hours in good faith would also have provided some indication and justification in his learning objectives as to why he only required a small number of hours.

43. If there was a concern at the assessment phase in the first instance this would not be a matter for enforcement. The barrister would be contacted to provide context for their decision and if appropriate they may be requested to undertake further CPD activities in the following CPD cycle.

Separating General Skills from Professional Statement Competencies

44. The Inns made a specific point that the BSB should be clear in separating the general skills and competencies that Barristers requires (exemplified in the Professional Statement) and the technical legal knowledge which should be a positive and necessary part of CPD.

BSB Response

45. The BSB would broadly agree that there should be clear distinction between the general skills and competencies that Barristers requires and the technical legal knowledge which should be a positive and necessary part of CPD.
46. BSB is unlikely to be as prescriptive as dictating a clear separation of the two. Maintaining adequate knowledge of technical skills is an important part of CPD and it is likely that all barristers will routinely include this as part of their CPD plan. However we wouldn't penalise a barrister who wanted to devote some of their CPD learning to develop further the core knowledge skills and attributes that all barristers need.

Provision of CPD activities

47. Some barristers feared that regardless of the merits of the scheme itself the lack of useful relevant CPD activities provided to the profession could hamper any efforts of barristers to meaningfully engage with the process.

BSB Response

48. CPD would remain a compulsory element of the Handbook. In addition there would be more flexibility as to CPD activities that could be completed. While there would be no requirement to attend accredited activities there would still be a clear demand for CPD activities. On this point it is worth noting that barristers already on average complete over the number of the minimum hours. It is unlikely therefore that removing the requirement to complete a set number of hours would very adversely affect the CPD provider market.

Guidance

49. One of the consistent messages from barristers who did not agree with the proposed new schemes was that the guidance available did not adequately explain what was required.

An example of this concern was;

“Appendix A does not provide sufficient guidance in formulating the expression of the requirements. The guidance will be generate anxiety about compliance and whether the practitioner is 'doing it right'. More examples are required to assist in expressing the identified needs in terms the BSB will be satisfied by. Practitioners will need guidance in thinking more broadly about the skills they may need to develop. Broad statements are unhelpful and more specific examples or case studies may be needed.

50. A significant number of respondents were more positive about their answers, either believing any challenges could easily overcome or that adequate guidance was provided to support barristers.

“There is no challenge as such! Any able and competent member of the Bar should comply with such requirements to update their knowledge to provide services for their respective clients.”

And

“Appendix A is very explicit and understandable, there are no issues or concerns in this regard and the scheme is perfectly explained”.

51. The **ILPA** acknowledged that there would be challenges in the early years of any scheme. Further guidance on how to identify suitable topics, record learning objectives, devising a plan and reflection may be required.
52. The **ILPA** suggested that outcomes could be best demonstrated with reference to how they benefited clients.
53. The **ILPA** suggested that detailed examples of completed learning plans were provided to give examples of good and bad practices. They also suggested that the BSB could hold webinars or other sessions that could help individual practitioners, chambers, practice managers clerks and education providers support individuals in devising learning plans and setting learning objectives.

BSB Response

54. Based on the consistent feedback that the consultation and pilot has provided the BSB will produce updated guidance. The guidance will provide more detail on the process that a barrister needs to follow to be compliant with the New CPD Scheme. It will also have examples of how a planning statement should be formulated.

Other comments

The ILPA answer provided some useful insights into completing CPD.

“There is no single correct way to do CPD. You should, however, seek a variety of activities that allow you to learn in different ways. There is evidence that undertaking a range of different CPD activities to address a particular learning need is likely to be more effective than one-off events. Your CPD should be a mix of formal and informal learning. It should include activities that take place locally where you work, as well as at regional, national or international levels. It may be helpful to set out how particular activities will support the learning objectives in your Personal Development Plan, and to discuss with relevant colleagues what resources you will need. Some of your learning should aim to help improve how your teams work, their contribution to the organisation in which they are based and how you work within those teams. In a multi-professional team, for example, it may help to develop leadership skills. If your CPD is focusing on making the team more effective, it should be undertaken alongside team colleagues. You should participate in peer-based learning in your specialty or field of practice. There are many ways to do this, such as peer reviews and peer tutoring. You can also learn in specialty networks, or through CPD schemes or programmes run by medical royal colleges or professional associations. Discussing and disseminating your learning to others may help consolidate your learning and enhance that of the team. (Organizing your CPD

[web-based resource, undated, accessed 29 July 2015], available at http://www.gmc-uk.org/education/continuing_professional_development/26746.asp)”

Q4: Do you agree that requiring a barrister to plan their CPD learning objectives for a year will help to make the CPD activities more relevant to the barrister’s needs? Please explain your view.

Q4 No 56 Yes 22

55. Pages 12-14 of the CPD Consultation Paper explained the requirements for barristers to plan their CPD and reflect on them at the end of the year. Barristers would be expected to identify learning objectives for the year which focus on the outcome of learning achieved at the end. Barristers could then self-assess the outcomes they hoped to achieve in order to choose appropriate CPD activities.
56. During the year but particularly at the end of the year barristers should reflect on the CPD activities they have completed. Barristers would assess the impact of their CPD activities. In particular, they should note whether the learning objectives were achieved as a result of the CPD or whether additional CPD is required in order to meet the desired outcome of learning.
57. The process is intended to be continuous and the Consultation Paper presented the idea that CPD completed in previous years should be considered when assessing CPD compliance.
58. The requirement to plan and reflect on CPD activities done is central to the new Scheme and it was also the most contentious point of the proposed new Scheme. The majority of respondents did not agree with the planning CPD activities in advance would be helpful. Nor did they believe that reflecting on CPD activities at the end of the year would be helpful. A significant minority did agree with these proposals.
59. Many barristers believed that what was being proposed was effectively a complete diary of every specific CPD activity. On this basis some respondents objected that the scheme could be too onerous and bureaucratic. The changing pace of legal developments made planning specific courses too difficult to achieve.
60. There was a concern that planning ahead could be restrictive if new relevant courses presented themselves. The question was raised as to whether any learning objectives could remain relevant over a twelve month span. Barristers worried that they would be locked in to a plan that was not useful and over how they could go about changing their CPD plan.
61. The new requirements were also objected to on the basis that they were a waste of time.
62. This objection was either based on the view that CPD of any kind was a waste of time or alternatively because barristers only ever attended relevant CPD and keeping a record would serve no function.
63. Finally concerns were raised that any plans would simply be generic formulations or only pay lip service to the requirements. Equally barristers may produce useful detailed plans but would not actually follow through with delivery.

64. The **ChBA** had a balanced view of the proposal that barristers should plan their CPD in advance.

They agreed that;

“requiring a barrister to consider, in advance of engaging in particular CPD activities, how those activities will improve their knowledge and skills areas will help to make the CPD activities more relevant to the barrister’s needs”.

65. However the **ChBA** disagreed that requiring a barrister to plan specific measurable outcome-based objectives for a year will help make CPD activities more relevant or useful,
66. The reason for this was that detailed planning of specific outcomes gave little room for changes to the law during the course of the year or unexpected opportunities during the year that may arise.

There were respondents who saw the value of producing a plan;

“This will clearly ensure that training is specific and directed towards areas where the practitioner requires knowledge development.”

67. Some respondents noted that barristers were often very busy so a measure of planning at the beginning of the year would aid compliance. It was noted that a plan would concentrate the mind as to where there were deficiencies of practice.
68. Some barristers noted that they already planned out their CPD and thought it would be good practice for others to do likewise. It was even suggested that it could become standard practice in Chambers to have practice meetings where this occurred.

BSB Response

(Note that this response also addresses concerns raised in answer to Q2 and Q3)

69. The proposed new CPD scheme is designed to allow barristers plan to be as flexible as possible. The BSB is not proposing that individual CPD activities are planned in advance only that learning objectives are planned in advance. Learning objectives should generally not be so specific that developments in the law in a 12 month period would render them completely irrelevant.

For example a barrister does *not* need to state;

‘I will attend the seminar ‘Cross Examining child witnesses’ on 3rd June at Example Chambers’ in the plan

Instead they should state something like;

‘I wish to become more adept at taking instructions from and dealing with vulnerable clients in order to provide better service in my public access work’

70. This also allows for a variety of different types of CPD activities to be undertaken and to take into account developments in the law.
71. Barristers should be recording a number of learning objectives in any case and general maintenance of their practice including keeping up to date with legal developments is likely to be included in most barristers’ plans.

72. In addition if necessary there is nothing stopping a barrister from updating their plan or their learning objectives if there has been a change to their practice or the law.
73. The BSB will update the guidance to include an example of how a plan can be recorded including some sample acceptable and unacceptable learning objectives.

Q5: Do you agree that requiring a barrister to reflect on the CPD activities at the end of a CPD year will help to make sure that CPD is relevant and addresses a barrister's future CPD needs? Please explain your views.

Q5 No 50 Yes 28

74. As with the proposed requirement to plan there was a similar breakdown of responses for the requirement for reflection, with barristers objecting stating that they felt it would be a waste of time and bureaucratic and that barristers would not produce more than a very cursory reflection.
75. Others, also objecting, took a different view. Here the comments were that barristers already reflect on their practice at the end of the year and having the BSB review this process served little regulatory purpose.
76. Again however there were barristers who could see the value in reflection, particularly how it could help plan for the following year. It was noted that for reflection to be useful it should occur throughout the year rather than at an arbitrary end of year cut off.
77. The **ChBA** agreed that reflection was useful both at the end of the year and after individual CPD activities.
78. The **ChBA** did have concerns about how in practice the BSB would be able to ensure that the profession meaningfully engaged with a process of planning and reflecting rather than simply providing lip service to these concepts.
79. **The Inns of Court** were very positive about end of year reflection while having some reservations about the idea of a barrister planning their CPD at the beginning of the year.

“An end of year reflection is likely to be more productive than an attempt at forward planning. It will enable a barristers both to review the quality of the CPD they have achieved and to think more critically about what CPD they should undertake in the following year”

80. The Inns did state however that the requirement to plan and reflect should not be too onerous and that the BSB should also not object if the learning objectives were different at the end and beginning of the year.

BSB Response

81. Reflection is an important part of the new scheme because it helps the barrister identify whether the plan was successful and also helps to plan for future.
82. The BSB does not believe that barristers who follow the CPD process as intended in terms of planning and reflecting will find it bureaucratic. It will ensure they are not

wasting time or money on irrelevant CPD activities. The BSB acknowledges that it may be possible for barristers to game the system by producing detailed plans and reflections that they do not intend to follow. However for a barrister to put the effort in producing a useful plan and then not follow it seems somewhat counterproductive for their own practice.

83. The planning and reflection stage will be a focus of the CPD assessment process by the BSB. Very cursory plans or reflections will be addressed through that process and advice given to barristers on how they may make better use of these stages in the future.

Q6: Do you agree the CPD regulations should take into account previous CPD records when assessing CPD in any one year? Please explain your views.

Q6 No 34 Yes 43

84. There was overall support for the idea that CPD should be taken into account in the next year, in particular if barristers were short some hours in one year but had many more hours in the next.
85. Both the **ChBA**, **ILPA** and the **Inns of Court** agreed with the proposal that the BSB should take into account CPD completed in previous years. The Inns did provide the caveat that this should be in the context of barristers who complete a small number of CPD hours one year but many CPD hours the next or a barrister who consistently fails to complete CPD.
86. Those respondents who objected to this proposal outright were of the view that the current system works and that a system which looked at previous years is not continuous.

BSB Response

87. The BSB believes that a barrister's professional development should build year to year. This necessarily requires the barrister and the regulator to take into account what CPD has been completed in previous years.

Q7: Do you agree with the proposed approach to the regulation of CPD compliance? Please explain your views.

Q7 No: 44 Yes: 25

88. The Consultation paper proposed a change in the way that CPD was regulated; compliance would be assessed not with reference to whether a barrister has completed a defined number of hours but whether the activities they have carried out are relevant and appropriate to satisfy the regulatory requirements in the CPD Rules and Regulations.
89. The Consultation paper explained the process of how CPD could be supervised and if necessary supervisory and corrective action could be set. Enforcement through disciplinary action would only be taken in exceptional circumstances. This approach builds upon the current regulatory approach to managing CPD compliance where only persistent non-compliance results in enforcement action.

90. The main objections to the new scheme was that it lacked clarity and further guidance was needed to make it effective.

One respondent commented that;

“It creates uncertainty, and increases the administrative burden on sole practitioners, without any commensurate benefit to the public.”

91. However these concerns were set against those respondents who thought that the proposed scheme offered more flexibility and was more supportive for barristers wishing to undertake relevant CPD. It was commented that the new scheme was no longer a tick box exercise.

The **ChBA** stated a number of concerns about the new scheme;

“We are particularly concerned that (a) the present guidance is not clear as to what is acceptable planning and reflection (b) many barristers will not turn their mind to this activity and effectively and (c) this will be difficult for the BSB to police”.

92. The **ChBA** also expressed concerns that barristers may complete relevant CPD but be found to be non-compliant due to poor planning and reflection. They also expressed a hope that the BSB wouldn't stifle barristers from exploring the edge of their practice.

However the **ChBA** did state that

“We do agree that it would be better to assist barristers with an agreed action plan if they are perceived to be in breach and that enforcement action should only occur if the particular barristers' obligations have been blatantly disregarded”.

93. Another specific concern included a worry that the BSB were determined to punish any alleged breach and would use the increased subjectivity of the new scheme to do this.
94. Further there was a worry that the process may lead to too many disputes as to whether there had been compliance or not.
95. The **Inns of Court** had considerable concerns about the proposed supervisory regime. The **Inns of Court** recommended that the assessment body should consist of legal practitioners and a practitioner's case should be considered by a panel consisting of a barrister in the same field. The Inns of Court also suggested that barristers should have access to documents and be able to make written submissions.

Finally they stated that “

“Barristers should be able to make their own choices on CPD. The circumstances of intervention should be closely defined. Since this is part of the enforcement regime procedure outlined in paragraph 43-44 is problematic”

96. The **ILPA** reiterated points that the BSB should work carefully to encourage barristers to set appropriate learning objectives. In particular they wanted to see Chambers take more of a role in CPD rather than it being a completely individualised process.

“Chambers who offer little support to members after the first few years following call may nonetheless have some good system in place for junior members of chambers, with which all members are familiar as pupil masters/mistresses. The

consultation paper appears to suggest a highly individualized process, with learning done in private and in isolation. We do not consider that this accurately reflects how many barristers learn.”

BSB response

97. The BSB acknowledges the concern that subjectivity creates an element of uncertainty but does not believe that this is insurmountable. It reflects the focus on outcomes rather than prescribed rules and regulations that the BSB has adopted. There are currently numerous parts of the Handbook that are subjective. For example rC87 states that barristers;

“Must take reasonable steps to ensure that your practice is efficiently and properly administered having regard to the nature of your practice”

98. Further guidance is provided to ensure barristers have context in which to do this but much is not prescriptively defined. In addition the process of Supervision Returns and supervision visits has allowed the Supervision Department to set actions to ensure this requirement is met. This has not led to numerous referrals to Professional Conduct Department for enforcement action.

99. In a similar way the intention of the BSB with regard to the proposed CPD scheme is to provide a framework to allow barristers to improve the CPD they undertake and to set specific actions where potential non-compliance is identified.

100. The primary point is that the BSB is not seeking to catch the profession out or to seek out opportunities to take enforcement action. Our focus is to make sure that standards are being maintained and that barristers are taking their professional responsibilities to continue to learn and develop seriously. The new CPD regime will, we believe, help to ensure that the Bar takes greater ownership of their CPD choices and uses CPD as a more effective means of maintaining standards. Enforcement will be reserved for flagrant or persistent non-compliance. The BSB will be seeking to build constructive relationships with barristers to understand their CPD choices (where they are not immediately clear) and to agree with the barrister, where the view is that those choices fall short of what the guidance on compliance states, what action should be taken. This approach has been successfully introduced within the Supervision Department in relation to the effective management of chambers and barristers’ practices and has been positively received by the Bar. We believe that it strikes the right regulatory balance and has significantly reduced enforcement action that would previously have been taken for minor infractions of the rules.

101. The BSB would note that some of the elements of the proposed new scheme’s assessment and supervision are already part of how CPD is currently administered and supervised. For example;

- i. Relevance is already part of the CPD requirements as it is included in the definition of what a CPD activity is.
- ii. The CPD team already provides some direction to barristers on which specific activities would or wouldn’t count towards CPD in terms of relevance.
- iii. Compulsory Corrective Action is already set by the CPD assessment team in lieu of immediate enforcement action for non-compliance. This has been the case for the last two years without objection.

102. From a supervisory perspective the BSB encourages Chambers, particularly those with the resources to do so, to take an active part in helping to ensure their members

are fully compliant with their CPD obligations. The BSB considers this to be good practice on the part of Chambers. However CPD must remain the regulatory obligation of individual barristers rather than a core function of Chambers administration.

103. The **ILPA** also noted that the scheme would potentially require significant resourcing for it to be effective.

Q8: Please describe any impacts (positive or negative) you foresee in relation to the proposed CPD scheme on Equality and Diversity.

104. The CPD consultation explained that an Equality Impact Assessment had been carried out. Some benefits had been identified, particularly with regard to the flexibility the new proposed scheme afforded practitioners. No major negative impacts had been identified.

105. Many respondents felt the new scheme would have no impact on Equality and Diversity. Disappointingly some made derogatory comments regarding the inclusion of this question.

106. Some respondents felt it would have a negative impact on this area. In particular there was a concern that a lack of clarity around what constituted compliance could have a negative impact on Equality and Diversity within the Bar.

107. However others saw some benefits for working parents, disabled barristers with access issues and with less well-off barristers.

108. The Inns of Court were positive about the new scheme. They said that;

“The impact will be very positive”

109. In particular broadening activities will better provide for those who find it difficult to attend other CPD activities. The **ChBA** agreed that broadening the range of CPD activities would be positive. However they also warned that increased cost of regulation would be a negative that the BSB should work hard to mitigate.

110. The ILPA noted that
“This approach may be more straightforward for barristers who work in larger Chambers with more established performance management systems and/or those Chambers who were awarded the Barmark quality standard operated by the Bar Council. Sole practitioners and the self-employed in smaller chambers may find it more difficult to demonstrate effective planning, identification of learning needs and evaluation of learning needs. We encourage the Bar Standards Board to closely monitor the feedback from the pilot in this regard and to explore whether there are any differences between barristers working in different workplaces.”

BSB Response

111. One of the purposes of the increased flexibility of the new scheme is to be able to take into account these different circumstances rather than be overly prescriptive.
112. With regard to the specific point about the time period for planning and reflecting on CPD this won't be very prescriptive but should generally be completed reasonably promptly at the beginning of the CPD year.

113. BSB overall believes the new Scheme will have a positive impact because of broadening the areas of CPD that will be included. Also there will be more flexibility with the amount of CPD that needs to be completed. For example a barrister on maternity leave would only need to reflect the fact she isn't working in her learning objectives when completing CPD rather than applying for a waiver from the requirements.
114. It is also hoped that the increased flexibility of the scheme will help those barristers who have difficulty physically attending CPD activities.

Q9: Please provide here any other comments on the proposed approach to the regulation of the new CPD scheme

115. There weren't any additional substantive comments that did not cover points that had already been addressed. However the comments from the Legal Services Consumer Panel (LSCP) should be addressed at this point.

Statement from the LSCP

116. The **LSCP** did not answer each question individually but did provide a detailed and helpful statement in response to the CPD consultation.
117. The **LSCP** explained that they had concerns about the current provision for barristers' ongoing legal training and therefore overall welcomed the proposed reforms.

“The proposals to make the CPD scheme outcomes focused should help to create a culture where individuals lead their own development and focus on what they need to do to stay up to date and improve their performance. The onus is placed on the barrister to identify personal objectives and to provide hard evidence to demonstrate delivery against these.”

118. However in some areas the LSCP did not think the BSB's proposed CPD scheme went far enough. In particular the Consumer Panel believed there should be periodic reaccreditation of high risk areas of legal practice.

“The Panel has consistently argued for periodic reaccreditation in higher risk areas of law. This is not something which has been considered in the consultation, and is an area we would strongly recommend looking into before finalising these proposals, particularly in the light of the Quality Assurance Scheme for Advocates”.

119. In addition the Corrective Action for non-compliance should be more significant as should the general sanctions for repeated failure to complete CPD.
120. There should also be more frequent monitoring between annual returns to ensure that barristers do not fail to maintain their standards or skills.
121. The Consumer Panel made it very clear that they believed that CPD was a very valuable tool in protecting the consumers of legal services.

BSB response

122. The BSB agrees with the importance the Legal Services Consumer Panel places on CPD and the value barristers get from carrying out meaningful CPD activities.

123. At the moment the evidence does not point to higher risk areas being more likely to be non-compliant with CPD so it is likely to be disproportionate to require these barristers to be involved in a reaccreditation process as a response to that.
124. The BSB would certainly be flexible with the type and amount of Corrective Action to allow an appropriate response. However the experience so far has been that corrective action with the aim of ensuring ongoing compliance has been beneficial.