



Future Bar Training Continuing Professional Development (CPD)

Consultation paper on the
proposed new CPD scheme for the Bar

May 2015

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Future Bar Training

Continuing Professional Development Consultation Paper

About this consultation paper

Who is it for?

We have produced this consultation paper for practising barristers, members of the Specialist Bar Associations, members of Circuits¹, attendees of our stakeholder and consumer groups, our staff and legal journalists.

Who is it by?

This consultation paper has been produced by the Bar Standards Board's Future Bar Training team.

What is its purpose?

We want to invite comments on our proposed new CPD scheme for the Established Practitioners Programme (EPP) and, in particular, how it will be applied in the real world.

How long will the consultation run for?

The consultation will run from 3 June to 2 September 2015.

Background

2007: The Bar Standards Board committed to review all stages of education and training at the Bar.

As part of our commitment, we have considerably reviewed the future development of CPD over the last five years.

2013: The Board approved a policy shift in CPD, moving away from a prescribed number of hours of CPD to an outcomes focused approach (focusing on the impact of a barrister's learning on their ability to provide a competent service).

This approach makes each practising barrister responsible for deciding the amount and type of CPD they should carry out.

¹ The Bar in England and Wales is divided into six regions, which are more commonly known as "Circuits". The Circuits provide important sources of support, advice and representation for barristers practising in those areas.

Our consultation

1. This consultation paper sets out our new way of regulating CPD, which will replace the current Established Practitioners Programme.
2. To protect the public, we have paid particular attention to developing a CPD scheme that will add value for the profession and will maintain high standards within the profession.

What about the current New Practitioners Programme?

3. We propose that the current New Practitioners Programme (NPP) will remain unchanged at present – so its future development is not included in this review.
4. Learning from the application of our new way of carrying out CPD, we will review the NPP to make sure it is fit for purpose and enables barristers to develop their skills and competencies during the early stages of their practice.

How the new CPD scheme fits in with our regulation

5. Within the legal sector, the regulatory environment is in a process of being developed and refined. Regulators are abandoning prescriptive rule books in favour of regulatory requirements that focus more on their desired outcome.
6. The old-fashioned style of regulation, where we take enforcement action after the issue has already happened, is becoming outdated and replaced by a more modern, collaborative way of regulating.
7. This more modern way of regulating means that we will take action where evidence suggests there is a risk a barrister could be non-compliant. We will try to resolve non-compliance by supervising barristers and helping to bring them back on track through corrective action rather than taking disciplinary action. Disciplinary action is a last resort for serious or persistent offences.
8. Allied to this shift in regulation are the recommendations of the Legal Education and Training Review (LETR). The LETR was commissioned by the Solicitors Regulation Authority, CILEx Regulation (or ILEX Professional Standards as it was known then) and the BSB to conduct an independent review of training provision within the legal sector.

Our Future Bar Training programme

9. Following the LETR recommendations, we launched [Future Bar Training](#) - a programme of review and reform intended to bring our training regulation up to date and assure high standards in barristers' services for the future.

Programme aims

10. [Future Bar Training](#) aims to make sure our approach to education and training is designed to make sure future training requirements:
 - prepare trainee barristers to practise competently at the start of their career;
 - promote innovation in teaching and learning;
 - offer flexibility in the pathways to qualification for the Bar or elsewhere;
 - minimise barriers that prevent people from accessing the profession, and
 - ensure ongoing competence throughout a barrister's career.
11. The [Future Bar Training](#) programme has identified the current CPD rules as an area of barrister training that does not measure up to the regulatory standards we have now adopted.
12. The CPD rules are too prescriptive and do not help us to address risks that are relevant to a barrister's practice.
13. So we have developed an approach to CPD that emphasises barristers' individual responsibility for identifying their own training and development needs.

Why are we changing the way we regulate CPD?

Our current CPD requirements

14. We define Continuing Professional Development as “a structured approach to learning to help ensure high standards in a barrister's current or anticipated professional practice”.
15. “High standards” includes:
 - barristers developing relevant knowledge and skills in their area of practice;
 - barristers keeping up to date with new developments in that area; and
 - barristers giving confidence to people who use their services and the public that they are competent in their area of practice.
16. We must structure any CPD scheme designed and administered by us:
 - to promote the general aims and purpose of CPD; and
 - to promote the completion of CPD that is relevant to the individual barrister.
17. A barrister on the current Established Practitioners Programme (EPP) must complete 12 hours of CPD every year. Four of these hours must be accredited by the Bar Standards Board. The CPD year runs from 1 January to 31 December every year.
18. Since 2013, barristers have not had to routinely send in their record cards at the end of the year - but we may call them for a spot check.

What is wrong with the current way of working?

19. We believe the current EPP CPD scheme has a tendency to operate as a tick-box exercise, without a clear focus on adding value to the profession.
20. Evidence suggests that compulsory or prescriptive requirements lead to “tick box” exercises, which are ineffective. This can lead to:

“People scrambling to fulfil their CPD requirements by taking whatever courses or attending whatever events are available and convenient, rather than activities that will genuinely support their competence and development.”²

21. Conversely, research shows that “encouraging and rewarding voluntary CPD activity, over and above any necessary and existing level of compulsion, is the most effective means of propagating good practice”³.
22. Current monitoring systems record that only a small minority of barristers (around 3 to 5%) do not fully comply with their CPD obligations each year.
23. However, we are concerned that barristers’ CPD choices are not always designed to enhance or maintain standards; barristers take them just to satisfy our required number of hours.
24. We can police the number of hours completed by barristers. But under the current EPP scheme it is far more difficult for us to assess if the CPD completed by barristers is relevant to their areas of practice and personal development.

In conclusion

25. We are not satisfied the current approach to CPD and its regulation encourages barristers to think carefully about their CPD choices. We want them to focus on CPD that makes sure that standards are maintained.
26. For this reason our proposed new CPD scheme is intended to be sufficiently flexible, so it can be tailored to the individual’s professional needs. It will also provide a way for barristers to better demonstrate the result of the learning achieved through their CPD activities.

² Friedman, A., Hanson, W. & Williams, C. (2009). Professional Standards Bodies: Standards, Levels of Compliance and Measuring Success A Report for the Financial Services Authority. Bristol: PARN. Page 40 Retrieved from <http://www.fsa.gov.uk/pubs/other/parn.pdf>

³ Institute of Continuing Professional Development. (2006). Research Project. Regulating Competencies: Is CPD Working? London: CPD Institute. Page 4 Retrieved from http://www.cpdinstitute.org/storage/pdfs/CPD_research.pdf

What are we proposing?

Our objectives

27. Our key objective is to develop a CPD scheme that encourages barristers to maintain professional and ethical standards at the Bar and which, through greater flexibility in our regulation, encourages barristers to take ownership of their learning and development.
28. In addition, in our proposed new way of working:
 - we want to encourage barristers to follow the regulatory objectives in section 1 of the Legal Services Act 2007 (the Act) and our regulatory arrangements in Part 4 of the Handbook;
 - we want to provide a credible system with which the profession can engage;
 - we want to place responsibility for deciding the type, scope and volume of CPD on individual barristers;
 - we want to avoid unnecessary and inappropriate escalation of minor failures to comply;
 - we want to focus our regulatory attention on those who represent a significant risk to the public interest; and
 - we want to provide a framework for those who represent a significant risk in other areas to be appropriately supervised.
29. We will focus any monitoring and review of the scheme on these objectives.
30. The Board has agreed a new, outcomes-focused approach to CPD regulation (focusing on the impact of a barrister's learning on their ability to provide a competent service). This decision reflects the extensive research and consultation we carried out over the last five years into the effectiveness of the current CPD scheme and developments in education and training of professionals.

Our new working method

31. When creating new regulatory initiatives we must bear in mind the Regulatory Objectives set out in the Legal Services Act 2007. We have assessed our new approach to CPD against the regulatory objectives and we are confident it promotes them.
32. In addition to these objectives and the principles of good regulation, we have considered our broader commitments under the Regulatory Standards Framework set up by the Legal Services Board.
33. The Regulatory Standards Framework was put in place to assess against common criteria the regulatory performance of the front line regulators under the Legal Services Act 2007. The framework helps us to make sure we target our regulation to where it is most needed.

Jan 2015: We initiated a pilot with a range of practitioners to test a trial of the new scheme and how it works in practice. The pilot is running in parallel with this consultation exercise.

34. There are 76 barristers taking part in the pilot - covering a range of practice areas, levels of seniority and employment and working contexts.

The objectives of our CPD pilot

35. Our objectives:
- we want to test how the above features work in practice;
 - we want to explore how we can help the profession to understand the new requirements; and
 - we want to explore the most efficient and effective way to regulate against the new scheme.
36. The pilot will take place between January 2015 and March 2016.

During the pilot

37. We have asked barristers taking part to work with a set of trial rules, requirements and guidance for our proposed new CPD scheme. To create the right pilot environment we have granted them a waiver from the current CPD requirements.

How we will use the information

38. We will use information we gather from the pilot together with responses to this consultation on the new scheme to refine our process and the associated rules, requirements and guidance for barristers.

What happens during the pilot?

39. We have asked barristers to send us a CPD planning statement and, in addition:
- we ask barristers for feedback on our process;
 - we give feedback on how well they have completed the process;
 - we send a series of surveys to participants through the CPD year;
 - we assess all CPD records to gather feedback and help us to improve our scheme.

The consultation process

40. We are opening the consultation process to the entire profession and members of the public. The consultation asks specific questions and we encourage you to answer by completing the online survey linked to this paper.
41. In our current CPD assessment process we have already incorporated a system of spot checks and setting corrective action for non-compliant barristers, rather than immediately referring a barrister for enforcement action.

42. The profession has responded positively to corrective action, resulting in a higher number of barristers completing CPD and a reduced number of enforcement action proceedings. We have learned a number of lessons that have helped us to decide the best way to supervise the proposed new CPD scheme.

How our new CPD regulation works

43. The broad principles of the CPD system are as follows.

The way we regulate barristers

44. We will ask barristers to carry out appropriate CPD that demonstrates they have kept themselves up-to-date and competent in the areas in which they practise.
45. We will not prescribe the number of hours a barrister must complete annually. Instead, we expect barristers to identify and manage their own training and development needs according to areas of practice and work/market demands. We will continue to operate CPD on a calendar year basis.
46. Our proposed new CPD approach is more flexible. We want to make each individual barrister responsible for determining the amount, type and nature of CPD they do annually.
47. To assess compliance, instead of checking that a barrister has completed a defined number of hours, we will check that the CPD they have completed is appropriate to satisfy the regulatory requirement in the Bar Handbook that all barristers must maintain appropriate standards of competence.
48. **Q1 Do you agree there should be no compulsory CPD topics for established barristers, but barristers must carry out a balance of activities? Please explain your views.**

Consistent ethical and professional standards

49. In our proposed scheme each barrister must:
- keep a continuous, up-to-date and accurate record of their CPD activities;
 - demonstrate their CPD activities are a deliberate mixture of learning activities, relevant to current or future practice;
 - source CPD from genuine providers;
 - certify that their CPD has contributed to the quality or development of their practice and service delivery; and
 - provide evidence, if called upon to do so, that the activities carried out are directly relevant to their area(s) of practice.

Recording and reflecting

50. We anticipate barristers will maintain online CPD records (we will make reasonable adjustments for barristers who are not able to provide an electronic return).

51. We expect barristers to maintain CPD records continuously and reconcile them annually (by 31 January of the subsequent year).
52. An important principle of the scheme is that barristers will be required to make a statement of the value to their practice of each developmental activity.
53. This is a first step in developing a structured and planned approach to CPD, which is at present unfamiliar to the Bar.
54. The barristers' online record of developmental activity will require such statements to be made simultaneously with the record itself.
55. We will ask barristers to explain briefly how they expected the activity would meet their development needs, and the extent to which that expectation was met.
56. We acknowledge that barristers themselves are generally best placed to identify their training needs. So in line with our commitment to outcomes-focused regulation, the CPD scheme will place more responsibility on individual barristers to identify what training is required for effective practice.
57. The proposed CPD scheme will involve barristers annually assessing the knowledge, skills and experience that they need as a barrister in order to continue to offer a proficient service to their clients and the public generally.
58. In light of these considerations we decided to depart from the current approach of a prescribed number of hours of CPD, for those barristers on the Established Practitioners Programme (EPP) and instead to move to an outcomes-based approach to CPD.
59. **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?**

How the new approach will work

Our proposed new CPD scheme

60. The new CPD scheme is explained in the Guidance in Appendix A. The Guidance aims to help barristers to complete their CPD requirements satisfactorily.
61. We will prepare new CPD rules in the light of responses to this consultation and feedback from those taking part in the pilot. In 2016 we will issue a further consultation on the rules.
62. **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.**

63. In summary, the new scheme places the responsibility on each individual barrister to determine the amount, type and nature of the CPD that they must carry out each year, with no minimum number of CPD hours required to be completed.
64. The new CPD scheme has five principal elements which a barrister must consider:
- planning;
 - learning objectives;
 - completing CPD;
 - reflection; and
 - declaring compliance.
65. It is important to understand the phases are not intended to operate in a linear way, with the next phase starting as the previous ends.
66. The new approach is intended to be more fluid, encouraging barristers to reflect throughout the CPD cycle and to review and refine their learning objectives periodically.
67. We will expect barristers to properly describe the learning, review, refine cycle in their CPD record cards and to justify it where necessary. Full details are provided in the appendices, but in summary:

Planning

Knowledge areas

68. We will expect barristers to spend time planning their CPD for the coming year. They should consider the following key knowledge and skills areas:
- personal values and standards;
 - technical legal knowledge and skills;
 - management of practice; and
 - working with others.
69. We expect that barristers will complete the Planning phase primarily at the beginning of the year. However, it is possible that barristers may identify or change their learning objectives throughout the year as a result of reflecting on their ongoing relevance. A barrister should record these changes to the plan as appropriate.

Barristers' learning objectives

70. Barristers will need to identify learning objectives for the year which focus on the outcome of learning achieved at the end.
71. Barristers will self-assess the outcomes they hope to achieve by the end of the year and the types of CPD activities that may be most appropriate to achieve these ends. These objectives should be specific and measurable, describing what outcomes the barrister will achieve, including what the learner will know or be able to do as a result of engaging in a learning activity.

72. A barrister should avoid providing learning objectives that are very generic. Good learning objectives are specific and focus on the outcome of learning. The following are good examples (for illustrative purposes only):

“To acquire knowledge of financial management to improve my ability to manage my costs and deliver a cost effective service to clients.”

“Improve my ability to spot cases which would benefit from forensic accountancy expert input and how to get the best out of a forensic accountant.”

“To make sure I am up to date with the relevant law, practice and procedure in employment law and to understand the current thinking of specialist solicitors in the area of settlement agreements.”

73. This activity will help barristers to make sure their planned CPD activities meet their technical knowledge and wider skills requirement.
74. **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.**

Completing CPD

75. The completion phase consists of the barrister carrying out appropriate CPD activities to meet their learning objectives.
76. In line with the move towards giving barristers more responsibility in assessing their CPD requirements, we have expanded the types of activities that barristers are allowed to do. For example, under the new scheme, we will allow legal reading to count as a CPD activity.

Reflection

77. In the reflection phase barristers will think about 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.
78. In line with the assumption that barristers are best placed to identify their own learning objectives, barristers can complete this phase through a process of self-reflection. However, there is nothing to prevent a barrister from completing their reflection with a colleague.
79. For example, it may be appropriate for an employed barrister to reflect on the impact of CPD activities completed, as part of an appraisal with a line manager. These decisions are for the barrister themselves to make and do not remove any of the regulatory obligation for a barrister to manage their own CPD.
80. Although we expect that barristers will reflect on the impact of their CPD activities at the end of the year it is also good practice for a barrister to reflect throughout the CPD cycle:

- to make sure learning objectives are being met;
 - to make sure learning objectives remain relevant; and
 - to make sure learning objectives are the right ones for the barrister.
81. This phase is designed to maximise the effectiveness of the barrister's learning and to help inform the barrister's CPD choices in future years. We can also use it to note where CPD activities may have been substantially different from those first proposed by the barrister in the planning phase.
82. **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.**
83. **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.**

Declaring compliance

84. Barristers must declare they have carried out suitable CPD each year. We may ask for evidence that a barrister has carried out the activities in their CPD record or ask them for other supporting evidence of CPD.
85. None of the above phases are prescriptive; it may be necessary for a barrister to change the intended CPD activities or even in some cases the learning objectives.
86. However, it will allow barristers to demonstrate to the regulator that they have completed a sufficient level of relevant structured learning in order to meet their CPD requirements.

How we intend to regulate CPD compliance

87. We will assess compliance 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.
88. Our Supervision department will manage CPD compliance:
- each year we will select a sample of barristers to assess their CPD records;
 - we will select the sample both randomly and by targeting (where for example, there is evidence barristers are not complying with CPD or other regulatory requirements);
 - trained staff will assess each CPD record of barristers in the sample. They will also review any other relevant material about the barrister such as previous CPD records;
 - they will check that barristers have appropriately planned their CPD with regard to the four recommended knowledge areas outlined in the Planning section;
 - they will check the relevance of barristers' CPD activities to the learning objectives and area(s) of practice; and

- they will check the barrister has reflected on how the CPD activities have met the learning objectives.
89. Staff will have available a panel of experts to provide advice on any complex or highly technical issues that arise during the assessment of a CPD return.
 90. In line with our risk-based approach to supervision, we aim to work collaboratively with barristers to make sure they satisfy the regulatory requirements.
 91. Members of the Supervision department will engage constructively with barristers in the sample to understand the CPD choices they have made.
 92. We will assess compliance by focusing on the outcome of the barrister's training or development, and less on the process (unless there is evidence that the process has resulted in the barrister not making appropriate CPD choices).
 93. If a barrister is assessed as having not completed appropriate CPD activities to ensure their compliance with the regulatory requirements we will deal with this in the first instance through supervision.
 94. Where we assess a barrister's CPD as not meeting the regulatory requirements we will, in the first instance, seek to agree with the barrister concerned an action plan for addressing the deficiencies in their CPD.
 95. Typically this will involve a barrister carrying out certain areas of CPD or completing additional hours. We will expect the barrister to produce their own corrective action plan as a first step.
 96. If we agree with the plan we will negotiate a timeframe for the barrister to complete the activities in that plan.
 97. If the plan cannot be agreed, it will be open to the BSB to impose the action plan on the barrister and the timeframe for completion.
 98. We will ask the barrister to provide us with evidence, within the specified timeframe, that the action plan has been completed. If the action plan is satisfactorily completed we will take no further action.
 99. We will reserve enforcement action for barristers who blatantly disregard the CPD regulatory requirements or where a barrister has failed to satisfy the agreed or imposed action plan to address CPD deficiencies.
 100. Enforcement action may also be appropriate where a barrister has been the subject of repeated corrective action over a period of years.
 101. **Q7 Do you agree with the proposed approach to the regulation of CPD compliance? Please explain your views.**

Assessing the merits of the current approach to CPD compared to the proposed new CPD scheme

102. Advantages of the current approach to CPD

Advantages of the current approach to CPD	
Clear expectations	<p>A defined number of CPD hours means that barristers clearly understand what is required of them under the current CPD scheme.</p> <p>We expect them to complete a minimum of 12 hours of CPD each year, four of which need to be accredited.</p>
Non-compliance is treated as an enforcement issue	<p>There is a clear incentive for barristers to comply, as non-compliance can result in disciplinary action.</p>
Not an onerous task	<p>Completing 12 hours of CPD a year is not an onerous task for barristers, especially compared to other professions.</p> <p>It does not impose an undue regulatory burden.</p>

103. Disadvantages of the current approach to CPD

Disadvantages of the current approach to CPD	
CPD is not viewed as a learning and development tool	<p>Many barristers focus on completing 12 hours of CPD rather than thinking about which CPD they should be carrying out to maintain their standards of practice or to develop their skills.</p>
Barristers are not held to account over their CPD choices	<p>As long as barristers complete 12 hours of CPD annually we will, in practice, deem them to be compliant.</p> <p>We will not assess the scope, nature or relevance of CPD carried out. The result of this is that some barristers are not using CPD to develop their practice.</p>
Using disciplinary action to enforce CPD is not the best way of making sure barristers prioritise their learning and development	<p>We believe the threat of disciplinary action, combined with a prescribed number of hours, means that many barristers are not making the best use of CPD and instead are just completing 12 hours to avoid disciplinary action.</p>

Disadvantages of the current approach to CPD	
	<p>This is particularly true if a barrister has failed to plan their CPD year and is required to complete their CPD in a few months at the end of the year.</p> <p>A shift in regulatory emphasis towards supervising CPD compliance and working with the Bar to maintain standards will encourage barristers to take a more positive and constructive approach to their learning and development.</p> <p>We will reserve disciplinary action for barristers who blatantly disregard CPD requirements</p>

104. Advantages of the proposed new CPD scheme

Advantages of the proposed new CPD scheme	
CPD will become a tool to assure competence and professional standards	<p>Barristers will be held to account for their CPD choices by the BSB. We will ask them to justify their choices and will assess them on issues such as relevance to practice, learning outcomes and personal development to find out if they are compliant.</p> <p>CPD will become a meaningful way of assuring barristers' competence and improving standards. This will have a positive impact on the public interest and the quality of service available to consumers.</p>
Barristers will take a positive interest in planning their CPD before completing it	<p>Because it will be a requirement for barristers to plan their learning objectives for the year, barristers will complete CPD activities on the basis of a specific plan.</p>
A removal of hours encourages the Bar to think more creatively about their CPD choices	<p>Barristers will no longer be required to complete a prescribed number of hours, but instead must carry out CPD (and be prepared to justify their decision) based on the needs of their practice and their career aspirations.</p>
<p>The new approach reflects:</p> <ul style="list-style-type: none"> • the low level of barristers not complying • the technical (rather than malicious or deliberate) nature of breaches • The trust we place in barristers to maintain standards 	<p>A removal of a prescribed number of hours and a shift away from enforcement and towards supervision brings with it the risk of barristers not making the expected level of commitment to CPD.</p> <p>We have balanced that risk with the need to be more targeted in our regulation and the need for the profession to take individual responsibility for managing their own professional and personal development.</p>

Advantages of the proposed new CPD scheme	
Enforcement will not be the first method of regulation	<p>This means the CPD scheme will have room to develop organically to meet the needs and expectations of the Bar and members of the public.</p> <p>Barristers at first may be uncertain about what is expected of them, but the consequences of that uncertainty are less severe for the individuals concerned.</p>
CPD becomes part of a barrister's practice rather than a discrete regulatory requirement	<p>The holistic approach we propose under the new scheme (where we assess a barrister's compliance on the type and nature of CPD rather than the volume) should encourage barristers to view CPD as important and natural parts of practice.</p>
We will place more emphasis on barristers identifying their own training needs	<p>This means that as well as dispensing with the need to complete a minimum number of hours, barristers have more freedom in the types of activities they complete which will count towards CPD.</p> <p>For example there will not be a minimum number of hours that barristers can devote to legal writing or editing to meet their CPD requirements. Barristers can now also count activities such as reading towards their CPD requirements.</p>
Moving away from a 'one size fits all' approach more accurately reflects the profession	<p>At the Bar there is a huge diversity in practice and, therefore, learning needs of its members.</p> <p>As such, barristers should be required to set their own curriculum which is specific to their practice and learning needs.</p>
CPD should take into account issues of equality and diversity	<p>The undertaking of CPD can have implications for equality and diversity in respect of cost and the demand on time⁴.</p> <p>We believe the new scheme has a positive impact on equality and diversity. It allows barristers to plan their own CPD based around their needs for the year, rather than forcing them to complete a prescriptive requirement that may not reflect their circumstances.</p> <p>This is particularly relevant for barristers going on maternity leave.</p>

⁴ LETR Literature Review pp. 42 – 43

105. Disadvantages of the proposed new CPD scheme

Disadvantages of the proposed new CPD scheme	
An absence of prescriptive hours introduces uncertainty around what compliance means	<p>Because there will no longer be a defined minimum number of hours to be completed barristers may be unsure about what is required of them to comply.</p> <p>To address the above potential disadvantage, we will provide guidance to the profession on its expectations around CPD.</p> <p>The guidance will be illustrative and allow flexibility so barristers are not fettered in their CPD choices by a particular idea of what CPD should comprise.</p>
The new CPD scheme requires more input from barristers	<p>Barristers are required to input more in the additional planning stage than the previous system of completing a minimum 12 hours of CPD activities.</p> <p>However, we expect that the act of asking barristers to focus on what outcomes they intend to meet will mean that the activities completed will demonstrably add more value to a barrister's professional practice rather than simply being an empty 12 hours required to 'tick a box'.</p>

106. In the light of the above evaluation of the current and new system, we are clear that the new approach to the regulation of CPD represents the right balance between supporting barristers and giving them individual responsibility for their own professional development.
107. However, we recognise that this represents a major shift in approach to CPD. We propose a lead in time for its introduction that allows sufficient opportunity for barristers to understand what will be expected of them.
108. We are currently piloting the new scheme during the course of 2015 to test how it works in practice. We can then refine the process before its eventual launch in 2017.

Timetable for implementing the new CPD scheme

Key activities	Dates
Consultation	June - September 2015
CPD pilot	January 2015 - March 2016
CPD rules consultation	April - June 2016
Legal Services Board approval	August 2016
Launch of new CPD scheme	January 2017

Equality impact assessment

109. We have carried out an equality assessment of the new approach to CPD and identified the following benefits:
- the new CPD scheme allows barristers to design their CPD according to their needs in any one year. It is adaptable, allowing for breaks in practice or for those returning to practise – in particular those on maternity leave;
Fundamentally, it is for each barrister to reflect on their own needs and plan their CPD accordingly to make sure they are competent;
 - there is no expected disadvantage created by the introduction of the new CPD scheme on the grounds of any of the protected characteristics;
 - to address any perceived risk of discrimination as a result of the age of a barrister, we have made a distinction between seniority of position and age in the proposed assessment of CPD.
110. We invite views on these benefits and whether there are any impacts (positive or negative) on equality and diversity and if so, what steps could be taken to mitigate or promote them.
111. **Q8 Please describe any impacts (positive or negative) you foresee in relation to the proposed CPD scheme on Equality and Diversity.**

Risk implications

112. There are risks attached to not having an effective CPD scheme in place, or of not having effective monitoring and regulation of the CPD scheme.
113. Without such schemes, there is the risk that barristers will have an inconsistent and unstructured approach to learning and development or the risk that barristers do no training to maintain standards of practice.
114. We need regulation to make sure barristers are meeting and carrying out their CPD requirements appropriately.

115. There is a risk that the following regulatory objectives in particular will not be met:
- Protecting and promoting the public interest;
 - Protecting and promoting the interests of consumers;
 - Encouraging an independent, strong, diverse and effective legal profession;
 - Promoting and maintaining adherence to the professional principles.

How to respond to the consultation

Consultation questions

116. The aim of the following consultation questions is to determine the level of agreement with the recommendations put forward by the CPD working group.
117. Please complete the following questions by filling in the [online survey](#):
- Q1 Do you agree there should be no compulsory CPD topics for established barristers, but barristers must carry out a balance of activities? Please explain your views.**
- 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.**
- 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.**
- 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.**
- 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.**
- Q7 Do you agree with the proposed approach to the regulation of CPD compliance? Please explain your views.**
- Q8 Please describe any impacts (positive or negative) you foresee in relation to the proposed CPD scheme on Equality and Diversity.**

Appendix A

Continuing Professional Development (CPD)

Guidance for barristers

The CPD definition

1. The BSB defines Continuing Professional Development (CPD) as “a structured approach to learning to help ensure high standards in a barrister’s current or anticipated professional practice”.

Section 1: The CPD cycle

2. In the following section we guide you through the different stages in the planning, recording, reflection and declaring cycle for CPD:
 - Planning (including setting learning objectives);
 - Recording and evidence;
 - Reflecting on your CPD activities;
 - Declaring competence.

Planning

3. When planning the range of CPD to carry out, it is important for you to consider the following key knowledge and skill areas:
 - Personal Values and Standards
 - Technical Legal Knowledge and Skills
 - Management of Practice
 - Working with others.

Compiling learning objectives

4. At the beginning of each CPD year you must compile a set of learning objectives. These are statements in specific and measurable terms that describe what the learner will know or be able to do as a result of engaging in a learning activity.
5. We would describe this as outcomes focused - what is the measurable change to competence to practise you will see as a result of your CPD? For example:
 - *“To acquire knowledge of financial management to improve my ability to manage my costs and deliver a cost-effective service to clients.”*
 - *“Improve my ability to spot cases which would benefit from forensic accountancy expert input and how to get the best out of a forensic accountant.”*
 - *“To make sure I am up to date with the relevant law, practice and procedure in employment law and to understand the current thinking of specialist solicitors in the area of settlement agreements.”*
6. You are individually responsible for your own CPD, regardless of additional learning support you may expect to receive (for example, in the context of employment).

7. When compiling your learning objectives, please consider the nature of the following:
 - The ultimate outcome of the learning objective;
 - Your field of practice, or intended practice;
 - Your record of recent instruction by clients;
 - Your type of practice (for example chambers, employed) and whether you accept (or intend to accept) direct access work;
 - Your strengths and weaknesses in your competence and skill as a practitioner.
8. This activity will help you to make sure that your planned CPD activities meet both your technical knowledge and wider skills requirements and will help you to determine your CPD needs.
9. Where possible, take a longer-term view when planning your learning and development, looking both at and beyond the forthcoming CPD year.

Recording and evidence

10. You must keep supporting evidence for the past three full years of practice.
11. It is up to you to decide what evidence to provide. We require that you keep the following information:
 - Title/description of your CPD activity;
 - Date (or date range) of your activity;
 - Type of CPD activity;
 - CPD provider (where applicable);
 - Knowledge area (see section 2)
 - Learning objective(s) met by the CPD activity;
 - Reflection on your CPD;
 - Evidence confirming you have taken part in CPD activity.
12. Section 3 outlines the information we would require to see in an example of a CPD Record and Plan.
13. Your evidence may include, but is not exclusive to:
 - An attendance record;
 - A certificate of completion/achievement;
 - Confirmation of results;
 - Notes compiled undertaking research or reading;
 - A sample of credited published journals/articles.

Reflecting on your CPD activities

14. We require you to reflect on the CPD activities you have planned and completed throughout the year.

15. You should complete an assessment of the extent to which your planned activities have met your learning objectives (as a minimum at the end of each CPD year).
16. However, you should also consider reflecting on individual CPD activities where they had a significant impact on your learning objectives, or where you felt the CPD activity did not meet the intended learning objective.
17. The reflection process is a useful exercise to:
 - Maximise the effectiveness of your learning;
 - Make sure you can adapt your CPD throughout the course of the CPD year to achieve your desired learning objectives;
 - Help inform learning objectives for future years.
18. This is also an opportunity for you to change the course of your planned CPD if your circumstances change during the year.
19. We expect that the reflection will be a solitary process completed by individual barristers for two reasons:
 - Because they are best placed to make that judgement;
 - To fulfil their regulatory obligation to take ownership of their own CPD.
20. However, you are free to discuss it with a colleague. For example, an employed barrister might feel it is appropriate to include the reflection process as part of an appraisal with a line manager.

Declaring compliance

21. You must declare that you have carried out suitable CPD each year.
22. The CPD year runs from January to December. As such, you will be able to declare compliance with the CPD regulations and complete Authorisation to Practise requirements (which require action in February and March) simultaneously.
23. We may ask for evidence that you have carried out the activities contained in your CPD record and plan. You may also need to send us supporting evidence of your CPD.

Section 2: Scope of CPD

Types of CPD

24. Types of CPD include, but are not limited to:
- Taking part in formal face-to-face training courses, including university courses;
 - Online courses;
 - Attending conferences;
 - Taking part in seminars or webinars;
 - Reading or research;
 - Authorship and editing of published works of a professional nature.
25. We encourage barristers to carry out a wide variety of CPD activities.
26. Each barrister's practice is different, and as such we do not prescribe one structure or amount of CPD to be carried out by all members of the profession.
27. CPD knowledge areas

Key knowledge areas you should consider	
Personal Values and Standards	<p>A key resource for barristers is the BSB Handbook (particularly Part 2: The Code of Conduct).</p> <p>It is essential for all barristers to be familiar with our regulatory requirements and our outcomes-based approach to regulation.</p> <p>You may wish consider:</p> <ul style="list-style-type: none">• Your ability to act confidently in your legal practice;• Your approach to your work and your ability to correct errors or admit your limitations;• Your interpersonal skills;• Your social awareness;• Issues of equality and diversity within your practice.
Management of Practice	<p>Law practice management is the study and practice of business administration in the legal context, including such topics as:</p> <ul style="list-style-type: none">• Workload and staff management;• Financial management;• Risk management;• Office management;• Marketing (including legal advertising). <p>You must know and understand what is required of you in managing your practice effectively.</p>

Key knowledge areas you should consider

	<p>Your approach to CPD in relation to the way you manage your practice will depend upon the nature of your practice.</p> <p>You need to take into account your type of practice and make sure you carry out CPD that best delivers the outcome suited to that type of practice.</p> <p>Types of practice</p> <ul style="list-style-type: none"> • Self-employed sole practitioner; • Self-employed in Chambers; • Employed as in-house counsel; • Employee or manager of an authorised entity; • Dual capacity. <p>Roles in practice</p> <p>You also need to take into account your role in your practice when planning and undertaking your CPD, for example:</p> <ul style="list-style-type: none"> • Head of Chambers; • Tenant; • Pupil Supervisor; • Pupillage Recruitment Manager; • Owner or manager of an entity.
Technical Legal knowledge and skills	<p>It is a code of conduct requirement (Part 2 of the BSB Handbook) that you must not provide services to clients beyond your competence.</p> <p>As a general rule, the more areas of law in which you hold yourself out as practising, the greater the need for CPD. It is for you to assess:</p> <ul style="list-style-type: none"> • If you are competent to offer services in any particular field of law; • The type and breadth of CPD that you require to maintain a sufficient level of legal knowledge and skills in these areas.
Working and others	<p>You must make sure that your knowledge and skills enable you to communicate and establish effective and professional relations with clients and others.</p> <p>Equality and diversity</p> <p>You must be able to demonstrate that you understand:</p> <ul style="list-style-type: none"> • The implications for your practice of equality and diversity legislation;

Key knowledge areas you should consider

- Procedures and techniques to work with vulnerable witnesses, victims and clients as appropriate to your practice.

Public access

If you wish to conduct public access work you are required to complete BSB accredited training in order to do this.

New Practitioner Programme (NPP)

Calculating CPD hours for NPP

28. As the requirements for new barristers are not changing, NPP barristers should continue to use the current CPD guidance.

How we assess your CPD

29. We will assess your CPD record card based on all three stages of the CPD cycle to make sure the training you have carried out fulfils the definition of CPD being structured learning.

Planning stage assessment

30. We will check:
- that you have considered the four recommended principal areas in which CPD activities could be carried out;
 - that you have identified a set of learning objectives that have specific outcomes;
 - that you have considered how your learning objectives and proposed CPD activities are relevant to your practice;
 - that you have evaluated your own strengths and weaknesses.

CPD activities assessment

31. We will:
- check the relevance of the CPD activities you have carried out against the area of practice you undertake and the learning objectives you recorded at the planning stage;
 - consider your experience and seniority (compared to the activities carried out and the type of CPD activities you completed in previous years).
32. There is no minimum number of CPD hours that you need to complete. This means that while a particularly low number of CPD hours (including no CPD completed for

the year) may draw additional scrutiny from our assessment team, it does not automatically mean a barrister is non-compliant.

33. Equally, if you carry out a large number of CPD hours this may still not be sufficient if you have not met your planned learning objectives.
34. You will not necessarily be non-compliant if there is a variation between your planning stage and the CPD activities you have completed. However, please address differences in the reflection stage.

Reflection stage assessment

35. Our activities:
 - We will check that you have reflected on how your activities have met your original learning objectives;
 - We will check if any variations between learning objectives and activities occurred;
 - We will check your assessment of future learning objectives.
36. If we are not satisfied with the CPD activities you have carried out we will initiate Supervision action described below.

Our Supervision and enforcement approach

37. Our new Continuing Professional Development (CPD) scheme is not based on a prescriptive set of rules or minimum number of CPD hours to complete. Instead, we have based it on a CPD cycle that incorporates:
 - A planning stage;
 - The completion of relevant CPD activities;
 - A reflection stage;
 - A declaration of compliance.
38. The assessment process for our proposed new CPD scheme will have to be more flexible in how it assesses barristers' compliance with CPD.
39. Our CPD assessment team will make more subjective rather than prescriptive assessments.
40. We may take enforcement action for non-compliance in relation to the appropriateness of the CPD carried out (failing to meet the required standard) or in relation to non-compliance with our process.

Examples that may lead to an assessment of non-compliance

41. Activities include:
 - Completing a CPD activity that is not relevant to your practice;
 - Completing a minimal amount of CPD over a number of years, with no justification of this in your learning objectives;
 - Completing the same CPD activity over a number of years with no adequate justification;
 - Completing a CPD activity that is clearly below your level of expertise.
42. We will not normally take enforcement action for a single isolated breach of our CPD rules. Instead we will base CPD non-compliance enforcement action on repeated non-co-operation with the regulator.
43. We will try to address issues relating to failure to meet the appropriate standard by supervisory activity and corrective action.
44. If a barrister is judged not to be meeting an appropriate standard of CPD either in planning, CPD completed or reflection then our CPD assessment team will provide relevant feedback to better help those barristers raise their standard of CPD.
45. We will not take any further action except for including you in the next year's spot check process. You will be informed of this.
46. At this stage we would be looking for an acknowledgement that this feedback has been accepted by the barrister.
47. Where you have been given feedback, in future spot checks we will assess your CPD activities in more detail and we will give further feedback if necessary
48. If you repeatedly refuse to complete the CPD process in full, or if you carry out CPD activities that are consistently irrelevant or inappropriate, we may set compulsory corrective action for you to complete.
49. Although we may set corrective action after the first spot check, in the majority of cases this action would focus on addressing gaps in your CPD that the assessment team has documented over several previous spot check years.
50. If you wish to challenge corrective actions set by our CPD assessment team, we will refer your case to an independent panel for review.
51. If barristers do not complete the corrective actions, we will refer them to Professional Conduct Department (PCD) for consideration of enforcement action. This referral could be on the basis of non-compliance with the CPD regulations or of failure to co-operate with the regulator.

Examples of corrective action

52. Examples include:

- We ask you to carry out (or discount as CPD) a particular type of CPD activity;
- We ask you to complete additional CPD hours;
- We ask you to expand on your planning or reflection stage (either in the current CPD year or for future CPD years);
- We ask you to confirm your area of practice or proposed areas of practice;
- We ask you to confirm that you have understood and acknowledged our feedback.

Our enforcement process

53. If you fail to complete corrective action prescribed by our CPD assessment team, you will be referred to the Professional Conduct Department for consideration of enforcement action.

54. The resulting enforcement action will usually be taken due to a barrister's non-cooperation with the regulator or non-compliance with parts of the process, which is a breach of Core Duty 9.

55. If you are referred for consideration of enforcement action, the PCD will deal with the referral in accordance with the provisions of Part 5 of the Handbook and any relevant operational processes and policies.

Other areas that could lead to enforcement action

56. Examples:

- Instances of dishonesty, including if you falsely declare completion of the CPD cycle;
- Failure to supply a CPD record and plan if we ask you for it.