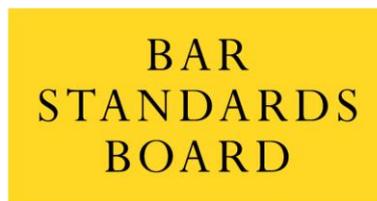


23 November 2018



REGULATING BARRISTERS

Continuing Professional Development CPD Compliance

Background

1. Mandatory Continuing Professional Development (CPD) for barristers came into force in 1997 and operated largely unchanged until 2017. The previous requirement was that following the first three years of practice after pupillage a barrister had to complete the Established Practitioners' Programme (EPP) every year. The EPP required barristers to complete 12 hours of CPD between 1 January and 31 December, of which four hours had to be accredited by the Bar Standards Board (BSB). The scheme was very prescriptive in nature, with a substantial list of professional development activities which could not count towards the total.
2. Following the results of the Legal Education and Training Review (LETR) in 2013 the BSB made a commitment to review and overhaul the EPP CPD requirements with a scheme that was more risk-based and outcomes-focused. In 2016, the Legal Services Board (LSB) approved new CPD rules and the new scheme came into force on 1 January 2017.
3. Since 1 January 2017, under the new scheme, EPP barristers must plan their learning objectives at the beginning of the year according to their individual development needs and area(s) of practice. They must record their activities throughout the year, and then reflect on what they have learned at the end of the year, including how they have met their learning objectives and what their objectives should be for the future¹.
4. The new rules for those on the EPP aim to enable greater individual responsibility in deciding the amount and type of CPD they should undertake and provide choice from a wider range of CPD activities. There is no longer a set number of hours of CPD which a barrister must do each year, CPD is no longer accredited, and there is no longer a list of prohibited activities. It is the responsibility of individual barristers to determine the amount of CPD that they should complete.
5. CPD forms part of the BSB's wider approach to assuring the competence of barristers. It sits within an assurance framework alongside other regulatory arrangements such as the Professional Statement and Threshold Standards, which is the basis on which education and training provisions are designed and delivered, and targeted regulation such as compulsory registration for those working in the Youth Court.

CPD spot check approach

6. In June 2018, a spot check commenced of a sample of CPD records from barristers on the EPP scheme. The sample of 707 barristers, which amounted to just under 5% of those on the EPP scheme, included a number of barristers considered to present a high risk of non-compliance due to their regulatory history (7% of the sample), with the rest of the sample selected at random. In determining the sample size, we took advice from the Research team.

¹ More information on the CPD requirements is available here: <https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/continuing-professional-development-from-1-january-2017/established-practitioners-programme/>

7. Barristers were contacted via email and asked to submit their CPD record for 2017.

Spot check results

8. Submitted CPD records were assessed as either compliant, compliant with feedback, or non-compliant. The results of the spot check are summarised in the table below.

Spot check assessment	Proportion of sample <i>(rounded to nearest whole number)</i>	Outcome
CPD record assessed as compliant	58%	Barrister not required to perform any further action.
CPD record assessed as compliant with feedback	29%	Barrister given advice on ways to achieve best practice for future records but otherwise not required to perform any further action
CPD record assessed as non-compliant	6%	Barristers given corrective action to complete (where appropriate).
Barrister did not respond to the request to participate in the spot check	2%	Referral to the Professional Conduct Department.
Barrister did respond but did not submit their CPD record	2%	Marked as non-compliant without corrective action.
Barrister has mitigating circumstances	1%	Barrister waived from participating in CPD spot check for 2018.

9. Common areas of feedback given to those whose CPD record had been assessed as compliant with feedback included:
- i. Having a limited range of learning objectives, or learning objectives were too generic;
 - ii. Having a limited range of CPD activities recorded, and
 - iii. Limited reflection on their CPD activities, how they met their planned learning objectives, or consideration of future learning objectives.
10. The purpose of the spot check was to promote compliance and good practice, so only those who did not co-operate with this spot check will be referred to the Professional Conduct Department (PCD). This is to give barristers a chance to become familiar with the new requirements. However, referral to PCD for enforcement action will be considered for repeated non-compliance in future spot checks.
11. Barristers with records assessed as non-compliant were, where appropriate, given corrective action to complete within 28 days. Those who performed that corrective action within the time limit were then marked as compliant. Of the 6% of records which were assessed as non-compliant, 45% were later marked as compliant or compliant with feedback after completing corrective action. Common issues which required corrective action included:
- i. Not completing a plan;
 - ii. No evidence of any form of reflection, and
 - iii. Abiding by the old CPD scheme (eg doing 12 hours of activities, using an old record template, not completing a plan or reflection).
12. Some records were assessed as non-compliant because the barrister simply had not done any CPD activity in 2017 or had not recorded any. This was often because the barrister was only practising a very limited number of hours, usually in preparation for retirement. These barristers were assessed as low risk due to their limited practice and so were not given corrective action. However, they were reminded of their obligation to abide by CPD requirements while they were still in practice and told that, should they still be practising at the time of the next spot check, they would be spot checked again. These barristers were also

reminded of the requirements under the new CPD scheme that any CPD activity should be proportionate to their practice.

13. A small proportion of those contacted did respond but ultimately did not submit a CPD record that could be assessed. These barristers were marked as non-compliant and, as corrective action was not possible for the past year, were reminded of the requirements and informed that they will be re-assessed for 2018.
14. A very small proportion of barristers were waived from participating in the spot check due to mitigating circumstances; reasons for waivers included pregnancy/maternity leave and being on long-term sick leave.
15. There were also 35 barristers who were not selected as part of the spot check sample but who declared during the Authorisation to Practise process in 2018 that they had not complied with CPD requirements in 2017. These barristers were contacted and asked to explain why they had declared themselves non-compliant. Where relevant, barristers were asked to submit a CPD plan for 2018 as corrective action. Correspondence with these barristers is ongoing at the time of writing this paper.

Lessons learned from the spot check

16. As part of the concluding work on the spot check, the members of staff responsible for assessing CPD records met with the member² of the BSB's Advisory Pool of Experts (APEX) for CPD to discuss some of the main themes.
17. One main theme which came out of the spot check were that a significant number of barristers were still either unaware that a new scheme for CPD is in place, or they knew a new scheme is in place but were unclear on what the scheme's requirements are. Several barristers returned a CPD record on templates used in previous years, with 12 hours of activity recorded as was previously prescribed. Many barristers did not produce a plan or reflection to accompany their record of activities.
18. When the scheme was introduced, a series of roadshows took place throughout England and Wales to promote it, and information has been available on the BSB's website and linked to in the Regulatory Update which is sent to all members of the profession. It is therefore disappointing that there remains a relatively high percentage of the barristers who did not know that the approach to CPD had changed. The APEX member was of the opinion that the level of compliance is good for the first year of a completely new scheme. However, it is clear that work must be done to continue to raise awareness of the scheme and what must be done to achieve compliance. Further promotion of the scheme by both the BSB and specialist Bar associations, circuits, and the Bar Council could help to reach those who are less engaged with the communications from the BSB.
19. Another main theme was that many of the records had little or no evidence that a barrister had done any form of reflection. Reflection is a vital aspect of the new CPD scheme; it allows the barrister to consider what they have learned during a period, what benefits (or lack thereof) have come from that learning, how that learning has been implemented in their practice and what further learning they may need to do. The BSB may need to provide more support to barristers to understand how reflection can benefit them and to promote a culture throughout the profession of continual self-directed learning.
20. We are planning to revise the guidance document and supporting materials available online and provide a shorter crib sheet version that is easier to follow; we could also provide more examples of model compliant records for illustrative purposes, and we could consider more creative ways of offering guidance such as videos or podcasts which could help those who

² APEX member biography available on the BSB's website: <https://www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/our-governance/advisory-pool-of-experts/apex-biographies/#Virginia>

may benefit from alternative methods of learning. It could be particularly helpful to ask barristers to deliver this information as it may be more relatable than the equivalent information being delivered by BSB staff.

21. Another area of weakness, often linked to poor reflection, was the use of ineffective, generic learning objectives. In a similar way to those suggested above for reflection, we could offer more support in how to create effective learning objectives which are specific and measurable, which would also aid in reflection later on.

Evaluation of the CPD Scheme

22. In order to understand the new scheme's overall effectiveness, the BSB's Research team is planning to commission additional evaluation work which will involve seeking barristers' perceptions and experience of the scheme.
23. This is currently intended to be externally commissioned research, consisting of an online survey aiming to gather views from a representative sample of barristers on the EPP scheme regarding their perceptions and experiences of the new scheme. This will likely be followed up with a series of interviews to enable a more detailed exploration of some of themes picked up in the spot checks and emerging from the online survey. The Research team will shortly be putting out an invitation to tender for an external organisation to assist in this work.
24. The evaluation will also include a more in-depth, quantitative look at the data obtained during the spot check to ascertain whether there were any trends in CPD compliance relating to characteristics such as type and area of practice, and also to see if the new scheme has any notable impact on equality and diversity. The results of the evaluation will be presented to the Board.

Relationship of CPD with assuring competence

25. It is premature to form a view on whether compliance with the new CPD arrangement has played a part in assuring competence of barristers. This is the first year of monitoring the new CPD arrangements and it will need time to become established before a full evaluation of its benefits on standards of barristers can be undertaken. The new approach adopted by the Board to quality assurance relies upon a range of information being gathered, of which CPD compliance is one part. The emphasis of this approach is on barristers taking greater responsibility to maintain their own professional standards within a defined regulatory framework. To understand whether this is happening, the BSB also needs to capture information from a wide range of sources about professional competence. There are ongoing discussions with training providers, representative bodies and the judiciary on how that information can be both captured and accessed.
26. Whilst there is work to be done to raise awareness of the new CPD scheme and for barristers to understand what is expected, the levels of compliance and engagement with the BSB nevertheless represent a positive start.