

# BAR STANDARDS BOARD

REGULATING BARRISTERS

## Continuing Professional Development– Consultation Report

The Bar Standards Board's report on responses to the consultation on the proposed new Continuing Professional Development Scheme

### INTRODUCTION

1. This report summarises the responses received to the Bar Standards Board's (BSB) consultation paper *Continuing Professional Development* which was published on 31 May 2016. It also seeks to address 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 closed on 1 September 2016. Responses have been given careful consideration by members of Supervision Team and by members of the Board.
3. The original consultation paper is available [on the BSB website](#).
4. 7 responses were received. These were from 6 organisations and 1 individual barrister.
5. The organisations that responded were:
  - The Bar Council
  - Government Legal Service (GLS) Bar Network
  - Youth Justice Board (YJB) for England and Wales
  - Council of the Inns of Court (COIC) Training Working Group
  - Chancery Bar Association (ChBA)
  - The London Common Law and Commercial Bar Association (LCLCBA)

### NEXT STEPS

6. An application to the Legal Services Board (LSB) under s4 of the LSA07 for approval for the proposed new CPD rules will be made following publication of this report.
7. There will be an extensive programme of engagement with the profession about the new scheme until the New Year when the scheme is expected to go live. Beyond January 2017 we will aim to provide further support for the profession to adjust to the new arrangements.

### ANALYSIS OF CONSULTATION RESPONSES

8. The consultation asked a single question;

**Do you think the proposed rules and regulations provide the necessary regulatory framework to support the new CPD scheme? Please explain your views.**

9. There was not a specific response form for this consultation. Respondents were asked to provide their responses to a designated email address.

10. In answering this question four of the respondents were positive about proposed new rules and the scheme in general, though provided additional input and feedback.
11. One of the respondents indicated that the rules in and of themselves provided the necessary framework to support the new CPD scheme but was critical of the proposed changes to the CPD scheme.
12. Two of the respondents were more critical both of the scheme and the proposed rules but provided useful input as to how the rules and guidance could be amended to better support the new CPD scheme.
13. Some of the positive comments were that:

**‘the proposed rules and regulations broadly do provide the necessary regulatory framework. They are succinct and refer appropriately to CPD Guidance and NPP Guidance’**

and

**“...the examples of compliant PDPs are very helpful, particularly in demonstrating the SMART aim and learning outcomes that the BSB expects to see.”**

14. The YJB noted that they wanted to
 

**‘...emphasise the role that continuing professional development must play in ensuring that barristers practising in youth proceedings build and maintain specialist youth advocacy and engagement skills. We would want to see CPD providing the types of soft skills which truly enable legal professionals to understand, work with and provide the best possible support and advocacy to children and young people.’**
15. More critical feedback and comments along with specific queries are noted and addressed below.
16. Some of the same points were raised in a number of the consultation responses, while other points were only raised by a single respondent.

#### Definition of CPD

17. A number of respondents raised various concerns with rQ130.2 of the proposed rules which sets out the definition of CPD.
18. LCLCBA stated that the BSB made an error in stating that the definition of CPD had not changed.
 

**“..it is stated at p.8 that “the definition of CPD has not changed”. However, the current Code has no definition of CPD”.**
19. The Bar Council stated:

**“Our first reservation is that the definition of CPD is wrong in so far as it seeks to require or encourage barristers to *develop* their practices. Some – indeed many –**

**barristers have found a practice niche where they are entirely content; do not wish to advance their learning (beyond keeping abreast of developments in their field); and are revered for their existing breadth and depth of specialism”.**

20. Both the LCLCBA and the ChBA provided alternative CPD definitions;

ChBA suggested definition:

***“continuing professional development” (“CPD”) means work undertaken over and above the commitments of a barrister to the barrister’s clients on their cases and is work undertaken with a view to developing the barrister’s skills, knowledge and professional standards in areas relevant to their present or proposed area of practice, including the proper running and management of that practice and providing training to pupils, in order to keep the barrister up to date and maintain the highest standards of professional practice”.***

LCLCBA suggested definition:

***“CPD means educational and training activities undertaken other than in the course of acting in relation to individual sets of instructions, with a view to developing etc [the barrister’s skills, knowledge and professional standards in areas relevant to their present or proposed area of practice, including the proper running and management of that practice and providing training to pupils, in order to keep the barrister up to date and maintain the highest standards of professional practice]”***

### **BSB response**

21. The current definition of CPD is found in the current regime’s detailed guidance on CPD ‘Compliance with CPD Regulations. A General Guide to CPD’ pg 3. The guide is on the BSB website and can be found at:  
[https://www.barstandardsboard.org.uk/media/1751041/a\\_general\\_guide\\_to\\_cpd\\_2016.pdf](https://www.barstandardsboard.org.uk/media/1751041/a_general_guide_to_cpd_2016.pdf)
22. The current definition of CPD is:
- “CPD is work undertaken over and above the normal commitments of barristers with a view to such work developing their skills, knowledge and professional standards in areas relevant to their present or proposed area of practice, and in order to keep themselves up to date and maintain the highest standards of professional practice”.***
23. Proposed rule rQ130.2 gives the definition of CPD as:
- Continuing professional development" ("CPD") means work undertaken over and above the normal commitments of a barrister and is work undertaken with a view to developing the barrister’s skills, knowledge and professional standards in areas relevant to their present or proposed area of practice in order to keep the barrister up to date and maintain the highest standards of professional practice.***
24. The BSB does not see a substantive difference between these two definitions. The BSB notes that the previous (substantively identical) description of CPD has been in use for many years, indeed it predates the existence of an independent regulator and was formulated by the Bar Council.

25. In so far as the BSB currently assess the relevance of CPD activities and determines which activities can count towards CPD this definition has been satisfactory. Therefore the BSB considers the current definition of CPD fit for purpose to apply the principles of the proposed new CPD scheme.
26. Finally the BSB is not altering the NPP scheme which uses the current definition of CPD. Changing the definition of CPD that applied to EPP barristers would mean having two different definitions of CPD - one that applied to NPP barristers and one that applied to EPP barristers. It would be inconsistent to have two different definitions of CPD.

*The status of hours of CPD completed*

27. rQ134.1 of the proposed rules makes reference to barristers setting out the number of hours they propose to complete during a calendar year:

**‘rQ134 An EPP *barrister* who is required to undertake CPD must:**

- 1. prepare a CPD Plan setting out the *barrister’s* learning objectives and the number of hours and types of CPD activities he or she proposes to undertake during the calendar year’.**

28. The inclusion of hours within the rules raised concerns from a number of respondents. These concerns were summarised by the ChBA:

**“...we would delete the reference to “number of hours” in rQ134(1). This appears to be contrary to the new policy and also none of the guidance attached actually complies with this supposed requirement”.**

29. There was also concern about the assessment section of the Guidance which noted that completing less than 10 hours of CPD activities would likely draw additional scrutiny from assessors.
30. COIC commented that the presumption by barristers may be that 10 hours was the new minimum, while the ChBA stated that:

**“Fourthly, we would add to the Guidance on rQ133 and rQ134 that, although there is no minimum number of hours of CPD “*completing fewer than 10 hours of CPD is likely to draw additional scrutiny from our assessment team which may require justification*”. This appears at page 21 of the document the BSB has produced and is sufficiently important to appear in the formal guidance to the rule itself”**

**BSB response**

31. One of the major proposed changes to the CPD requirements is the removal of a mandatory set number of hours that barristers need to complete. Within the guidance to the new scheme barristers are asked to consider the amount of training and CPD activities they need to complete.
32. The guidance notes that there is not a set number of hours that would be considered non-compliant or a number of hours that would automatically ensure compliance. It is noted that completing fewer than 10 hours may invite more scrutiny as to whether a barrister had fully considered their training needs for the year.
33. It is in the context of ensuring barristers had fully considered the amount of CPD they should complete in a year that the proposed rules included a requirement that the proposed number of hours be included in the planning statement.

34. However taking into account the responses from the consultation this requirement likely focuses too much of a barrister's attention on completing a set number of hours rather than considering their training requirements as a whole. On this basis the BSB will amend this rule to remove the requirement to provide a proposed number of hours and remove the reference to a suggested minimum number of hours.

#### Employed Bar

35. A number of respondents raised concerns with how the new scheme would apply to the employed Bar.

36. The Bar Council stated that:

**'...the proposal takes insufficient account of the nature of practice at the employed Bar. Although that practice varies, many employed barristers (a) will not provide any advocacy services; (b) will not be involved in practice management; (c) will often work to corporate or employment goals which may be quite inconsistent with those set out in the proposed rules; (d) will wish to engage in business and management training to a far greater degree than is reflected in the proposed rules.'**

37. On the other hand the GLS welcomed the new scheme:

**'The GLS welcomes a more flexible and outcome focused approach to CPD. A flexible approach is likely to be more suitable to a diverse bar encompassing the needs of both the employed and self-employed bar.'**

38. However, along with other respondents the GLS queried the role of practice management in the new scheme:

**'We would also appreciate confirmation that an individual's role, for the purpose of the 'practice management' area, could include the management of other lawyers. At the more senior levels of the GLS one of the most important aspects of our role is managing and delivering legal advice through others. This role is carried out by our managers, team leaders and directors and it would be helpful if this was reflected in the 'practice management' box.'**

39. The GLS also noted that they would like to see more examples of learning objectives that related directly to the employed Bar.

40. COIC wanted assurance that members of the employed Bar could use the relevant parts or perhaps the whole of their in-house record which they or their employer keeps in order to comply with CPD requirements.

#### BSB response

41. The BSB intends for the new CPD scheme to apply to all barristers who hold a practising certificate, this includes members of the employed Bar. The BSB sees no difficulty in principle with the employed Bar being able to comply with the new scheme. Indeed during the development of the proposed new scheme it was the experiences of members of the employed Bar that acted as one of the drivers for creating a more flexible scheme.

42. During development the BSB recognised that the employed Bar regularly completed valuable and relevant training. Often however they were unable to claim the full number

CPD hours completed because of current restrictions on the types of CPD activities that were permitted or because their CPD activities were accredited by alternative regulators such as the SRA.

43. The BSB can confirm that barristers including members of the employed Bar can use relevant parts or the entirety of in-house records where this is appropriate to satisfy the proposed new scheme's requirements.
44. With regard to comment (a) that the Bar Council have made the BSB would note that the guidance asks barristers to consider the knowledge and skill areas when planning their CPD requirements. There is no prescriptive requirement for every knowledge or skill area to be included within the plan as a proposed activity. Indeed the examples of compliant plans do not include every knowledge and skill area.
45. With regard to comment (b) the guidance clearly states that
 

**“Your approach to CPD in relation to the way you manage your practice will depend upon the nature of your practice”**

and

**“You should also take into account your individual role or roles in your practice when planning and undertaking your CPD activities.”**
46. Furthermore one of the stated aims of the new scheme is to ensure that barristers do not need to attend irrelevant CPD activities.
47. The guidance therefore provides the framework to allow a barrister to consider and then reject practice management as a topic for further training if that is appropriate to their practice.
48. With regard to Bar Council comment (c) the BSB notes no examples have been given of corporate or employment goals which would fall within the definition of CPD but are prohibited by the proposed rules or supporting guidance.
49. With regard to the Bar Council's comment (d) there is nothing in the proposed scheme which prohibits business and management training. The *current* CPD scheme, which the Bar Council appears to wish to preserve, specifically prohibits these activities as counting towards CPD<sup>1</sup>.
50. The proposed new CPD scheme does not prohibit practice management training. This includes practice management training relating to how others are managed or how legal services are provided through others. This could include how a barrister in employed practice manages other barristers or other legal service providers such as paralegals. It could also include how a barrister in the role of Head of Chambers or a member of a management committee administers their practice.
51. Practice management can also include training designed to improve fitness to practice, including training on managing stress and anxiety in the work place or self employed practice.

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<sup>1</sup> pg 9 'Compliance with CPD Regulations. A General Guide to CPD'

'[https://www.barstandardsboard.org.uk/media/1751041/a\\_general\\_guide\\_to\\_cpd\\_2016.pdf](https://www.barstandardsboard.org.uk/media/1751041/a_general_guide_to_cpd_2016.pdf)'

52. There is only a limited number of prohibited CPD activities under the proposed new Scheme. They are listed on pg.12 of the guidance.
53. However for clarity the BSB will amend the guidance to specifically include reference to business and management training, including management of individuals.
54. Similarly the BSB will also include one or more examples of planning that relates directly to the employed Bar.

*Recording CPD Plan and activities and retaining evidence*

55. There were a number of comments from respondents about CPD planning and how activities would be recorded and how evidence would be retained under the new scheme.
56. Specifically a number of respondents wondered whether there would be a prescribed form that needed to be used to record the planning stage and the activities completed.
57. The LCLCBA stated that :

**'The draft Code of Conduct provisions refer to a CPD Plan; to maintaining a record of CPD activities undertaken; and to a declaration of completion. However, it is not clear whether the BSB intends to produce a form in which these records can be kept. It seems to us to be vital, if the new CPD scheme is to work, that barristers should be provided with a form which can be filled in, and which provides the necessary structure for completing the new CPD exercise. The example CPD Plans in the Annex to the consultation could provide the basis for such a form. If the BSB does not propose to create such a form, the LCLCBA will consider creating an example CPD Plan in electronic document format and making it available to its members.'**

58. The LCLCBA also queried whether an online tool would be developed to aid with recording and submission.

**'We also note in this respect that the BSB appears previously to have considered creating electronic plan and record cards, to be submitted via an online portal. Reference is made to this proposal in the BSB's CPD Pilot Results of April 2016. Paragraph 28 of that paper suggested that whilst the new CPD system would come into effect in 2017, the online portal would not be operational until 2018. For its part, however, the Consultation Paper makes no reference to any online portal, or indeed to any other standard form documents or forms on which barristers are to maintain their CPD records. That is a rather odd lacuna.'**

59. The LCLCBA also queried whether the CPD plan and record of activities needed to be in writing as this was not stated in the proposed rules.
60. A number of respondents also had comments about retention of evidence. This was summarised by COIC:

**"Under rQ134.2 barristers must keep a "record" of the CPD activities undertaken in each year and retain "evidence" of completion of CPD for a period of three years. This appears to suggest that the "record" and the "evidence" are not the same thing. This is borne out by the terms of rQ134.3, which states what a "record" must contain. If it is correct that the "record" and the "evidence" are different, for how long must the "record" be kept?"**

### **BSB Response**

61. The BSB does not intend to produce a prescribed form that barristers must complete in order to be compliant. In due course the BSB does intend to produce examples of CPD Plans and Record Forms. Membership organisations are also free (and encouraged) to produce their own examples.
62. The BSB will engage with membership organisations to produce examples of completed Plans and Record Forms that are focused on particular practice areas and reflect different stages of a barrister's career.
63. It is extremely unlikely that the format of a CPD submission would by itself lead to non-compliance with the scheme. If a CPD plan and record was submitted in a format (including some examples of handwritten forms) that was unreadable the BSB may request a barrister resubmit in a format that was legible. In practice this is the same position that exists under the current scheme.
64. The BSB hopes to create an online portal for maintenance and submission of CPD records however for resourcing reasons it is not currently a priority in the Bar Council's Information Management Programme and no date has been determined for when such a facility might be available. In the meantime, we propose to work with representative bodies, as discussed above, to ensure that barristers have appropriate electronic forms on which they may record their CPD activities. We expect that this will be a more cost effective way of providing assistance to the profession.
65. The intention is that all stages of the completion of CPD, including the planning stage, recording activities and reflection should be in writing. The CPD rules and guidance will be amended to reflect this.
66. A CPD record refers to information about the activities that have been completed; dates, venue, CPD provider and so forth.
67. Evidence refers to information that confirms the barrister completed the stated activity. This could include for example (but not as an exhaustive list) a certification of completion, a copy of the registration, email confirmation from the provider, course materials and so forth.
68. The intention is that the CPD Plan and record of activity including reflection is retained for three years but there is no regulatory requirement to keep specific pieces of evidence. The rules and guidance will be amended to reflect this more clearly.

### **The NPP and EPP rules, guidance and definitions**

69. A number of respondents had comments about the way in which the rules had been drafted to differentiate between the New Practitioners Programme and the Established Practitioners Programme.

70. The ChBA commented that they considered it:

**‘...more user friendly to group the NPP and the EPP rules in separate sections’.**

71. The individual respondent commented that:

**“In rQ132, reference is made to an NPP barrister who is in the first 3 practising years after any pupillage year. This does not cover the situation where a barrister has not completed pupillage e.g. because they were formerly a solicitor. Where a person transfers to the Bar midway through a year. Does that situation count as a pupillage year, or do the Rules need to be expanded to cover the transfer year situation?”**

72. The same respondent also noted:

**“The NPP guidance is not included in Annex 1. When this is published, it would be useful if it is in similar form to the guidance for the current scheme, i.e. setting out any limits on what may be claimed as CPD (as well as identifying the compulsory courses as explained in the consultation document).”**

73. LCLCBA was rather critical of the way the distinction between NPP and EPP barristers had been drafted:

**“it appears to us that the drafting of the relevant Code provisions is unnecessarily tortuous. Is it really necessary to use terms like ‘EPP barrister’ and ‘NPP barrister’? Is it necessary to retain a provision which is exclusively concerned with barristers who entered practice prior to October 2001 and only partially completed the Continuing Education Scheme? The BSB claims that its regulatory approach is risk-based and outcomes-focussed. October 2001 is now nearly 15 years ago. Does the risk created by such individuals (if there are any at all) justify this transitional rule having pride of place in the Code?”**

74. Finally COIC commented that:

**‘If the BSB should at any time in the future propose changes to the NPP the Inns and Circuits, who deliver the programme, will wish to be fully consulted.’**

### **BSB Response**

75. The BSB has no intention currently to alter the NPP scheme. As such for the purposes of the development of the new EPP scheme the NPP rules and guidance have been left entirely untouched.

76. Barristers who are familiar with the current scheme, including its guidance, will be familiar with the terms New Practitioner Programme and Established Practitioner Programme barristers. As the NPP scheme is not changing the BSB did not see a compelling reason to remove these terms altogether as they serve the purpose of allowing a barrister to ascertain which CPD schemes they are on.

77. The term NPP appears in the current CPD rules and guidance but the term Established Practitioner Programme only appears in the current guidance. The new rules can be seen as an opportunity to achieve consistency by setting out the two schemes together.

78. For this reason the transitional arrangements found under rQ131 have been retained. Barristers for whom the rule applies are effectively completing an earlier version of the NPP.

The BSB can confirm that this rule is still used albeit it now applies to a very small number of barristers.

79. In response to the specific question raised about a barrister who began half way through the year, they would have three years from 1 January in the year after they obtained their full practising certificate to complete the NPP. The remaining time between actually receiving their practising certificate and the next 1 January is not counted towards the NPPs three year limit but CPD activities can still be completed during this period and would count towards the completion of the NPP requirements.
80. NPP will continue to use the current guidance that can be found on the BSB website by following this link to the [CPD guidance](#)
81. It is anticipated that the current NPP guidance will be updated in early 2017 to provide further clarification around the NPP scheme.

#### Status of Guidance

82. COIC had concerns that there was ambiguity as to how Guidance should be treated, particularly as to whether there were mandatory parts of the Guidance.

**'This part of the Guidance may be contrasted with earlier passages on page 11 of the Annex which repeatedly says what a barrister "should" do to comply with the various requirements: the word "should" is used eight times. It may also be contrasted with the Guidance on Recording and Evidence on page 19 of the Annex which states that "you are encouraged" to keep a note of evidence of CPD activities which "may include" a number of pieces of information. It is said that the BSB recognises that "retaining evidence may not always be practicable". It therefore not a "requirement", although there will be an onus on a barrister to produce such evidence if challenged.'**

83. The ChBA made a distinction between the 'formal' Guidance found in the Handbook and the further 'informal' guidance document that described the CPD scheme.

#### BSB Response

84. In order to ensure there is no ambiguity as to the status of Guidance the rules have been amended so that the Guidance is referred to as something barristers 'should have regard to'.
85. The Guidance is presented as a best practice framework for barristers to use in order to aid with compliance but has been amended to remove any suggestion that it is a prescribed set of mandatory provisions.
86. It is also worth highlighting the provisions of the Handbook with regard to guidance and particularly I6.4.b and c:

**.b The Guidance set out in this Handbook is not the only guidance which is relevant to BSB regulated persons. In addition to the Guidance, the Bar Standards Board has published and will publish from time to time various guidance on its website which supplements this Handbook, including (but not limited to):**

**.i the Pupillage Handbook;**

**and**

**.ii the BSB's Supporting Information on the BSB Handbook Equality Rules**

**.c In carrying out their obligations or meeting the requirements of this Handbook, BSB regulated persons must have regard to any relevant guidance issued by the Bar Standards Board which will be taken into account by the Bar Standards Board if there is an alleged breach of or otherwise non-compliance with of the obligations imposed on a BSB regulated person under this Handbook. Failure to comply with the guidance will not of itself be proof of such breach or non-compliance but the BSB regulated person will need to be able to show how the obligation has been met notwithstanding the departure from the relevant guidance**

87. On this basis the Handbook does not make a distinction between the guidance in the Handbook and guidance found in supplementary documents such as CPD guidance.
88. Nor would the Handbook guidance be described as formal guidance and additional guidance found in supporting materials be described as informal guidance.

*Knowledge and Skills areas*

89. COIC reiterated some of their previous concerns where they had commented about the knowledge and skills area that:

**“The Inns in their Response to the earlier Consultation Paper on CPD (see para.9(3) of the Response and the Answer to Question 3 (2) (para. 12) warned the BSB against confusing CPD with the possession of all the knowledge skills and attributes required of a barrister as set out in the Professional Statement and the proposed Threshold Standard. Not all of these matters lend themselves easily to CPD, and barristers may struggle to find appropriate CPD which will satisfy some of these requirements. For barristers what CPD is really about is keeping up to date with the law and new thinking about professional practice, and improving forensic skills. Deciding to expand into other areas of work may count as practice development, but not CPD as it is generally understood. The examples given of good Planning will strike some as vague and naive. It is felt that the Inns' earlier warning has not been properly heeded.”**

90. The ChBA noted some inconsistencies in how different knowledge and skill areas were described, with the Advocacy section using the phrase **‘This includes the ability to’** and the Practice Management section using the phrase **‘This may include topics such as’**
91. The LCLCBA stated that one of the errors in the guidance was:

**“It is stated at p.13 that barristers must be able to be transparent about their fees, but most barristers' fees are dealt with by their clerks. Barristers will often not be in a position to be transparent about their fees, since they are not party to the negotiation of such fees.”**

**BSB response**

92. The BSB understood the Inns point in the 2015 consultation and responded to it.
93. The response in the BSB 2015 CPD Consultation report may be worth repeating for clarity.

**“The BSB would broadly agree that there should be clear a distinction between the general skills and competencies that Barristers require and the technical legal knowledge which should be a positive and necessary part of CPD.**

**The 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 use some of their CPD learning to develop core knowledge skills and attributes that all barristers need.”**

94. The BSB will amend the knowledge and skills areas to ensure consistency of terminology.
95. The BSB was somewhat surprised and concerned at the assertion that barristers will not be in a position to be transparent about their fees. There are a number of provisions in the Handbook that provide for this as one of the responsibilities of individual barristers. These include oC18, rC19, rC20 and rC125.7 amongst other provisions.
96. The BSB does not propose to repeat the substance of all of these Handbook provisions in this consultation report but would strongly encourage respondents to remind themselves of their obligations to their clients.

**Compliance Examples**

97. There were some queries and concerns about how compliance with the new scheme would be achieved.
98. In addition COIC felt that the compliant examples could be seen as vague and naïve.
99. The GLS stated:

**“We query the first example of circumstances leading to an assessment of non-compliance, relating to CPD activities not relevant to a barrister’s practice. The range of topics on which barristers in government advise is often reactive, reflecting needs that arise within government from time to time. Training for such queries requires a very wide range of topics, which may seem irrelevant to the current practice of the barrister concerned. We would also be concerned if it was not possible for at least some of a barrister’s CPD to be comprised of topics which were new or interesting to that barrister, irrespective of if the barrister planned to practice them or not. Access to such topics can permit critical reflections on other areas of law, heighten general legal skills, and engage intellectual curiosity, all of which are important for the practice of any barrister. We would therefore suggest that compliance action only occur if there are a significant number of CPD activities that are not relevant to current or future practice.”**

100. The ChBA was concerned that worthwhile but generic learning objectives could lead to non-compliance.
101. The LCLCBA queried how a declaration of compliance is made at the end of the year.

**BSB response**

102. The examples of compliant learning objectives were not primarily formulated by the BSB, they come from examples of learning objectives created by pilot participants. They were further reviewed by barristers to ensure they would make sense to other practitioners. The BSB's involvement was principally to ensure anonymity and that an example of each of the knowledge and skills areas were included.
103. The BSB does not believe that the barristers involved in providing and reviewing these examples were being vague or naïve.
104. The BSB does not want to dampen intellectual curiosity. However the new scheme does need to ensure that activities completed meet the definition of CPD.
105. In practice it is not that the simple inclusion of obviously irrelevant activities would lead to non-compliance, it is that those activities would not be included when assessing whether the learning objectives had been met.
106. This is to say during a spot check of CPD compliance if the barrister was assessed as having completed relevant activities that meant they had achieved their learning objectives then the barrister would be considered compliant.
107. Any activities that were not considered relevant would not impact on this assessment.
108. Depending on the circumstances a barrister might receive feedback to simply point out that particular activities had not been considered relevant to the stated Plan so that the barrister did not rely on those activities in the future.
109. In addition if activities permitted critical reflections on other areas of law or improved legal skills it may be that they are not actually irrelevant, if they help a barrister meet their learning objectives.
110. With regard to generic and unfocused learning objectives, it would depend on the context. If a barrister was effectively providing a summary of the definition of CPD as their sole learning objective that would not be sufficient. Additionally generic learning objectives often do not specify a particular outcome.
111. However a generic learning objective amongst others can act as a header for stating learning objectives that have more specific outcomes.
112. The declaration of compliance is covered at 'Stage 4: Declaring compliance' of the guidance on page 13.

**“You must declare that you have carried out suitable CPD each year.**

**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.”**

113. This is in effect the same situation that occurs under the current scheme.

Qualification of Assessors

114. COIC commented that:

**“The various stages of scrutiny and enforcement, as now described on pages 22-24, are incremental and do not appear to be controversial. However a major concern raised in the Inns’ Response to the earlier Consultation Paper (see paragraph 16 of that Response, answering Question7) related to the composition and qualifications of the assessors who would be responsible for the spot-checking and (if necessary) enforcement processes as now described. This issue is not addressed. The BSB must be able to provide this information and is requested to specify either in the Rules or the Guidance what qualifications, knowledge and experience the assessors will possess.”**

**BSB response**

115. The assessment and supervision of barristers spot checked for CPD compliance will fall under the Regulatory Assurance Department of the BSB.
116. Enforcement action (where necessary) will be the responsibility of the Professional Conduct Department
117. It would be both inappropriate and inconsistent with its approach elsewhere for the BSB to specify in rules and guidance the qualifications, knowledge and experience an employee of the BSB must have to implement a particular Handbook provision. The BSB has a general responsibility to ensure that it has the capacity and capability needed to fulfil its role as a regulator , a formal scheme of delegations to give appropriate authority to those making assessment decisions and an assurance framework to underpin both.
118. The BSB will ensure that assessors have appropriate knowledge and training to make assessments of a barrister’s CPD activities and learning objectives.
119. Where necessary the BSB will also be able to draw on the advice of third party expert advice, including from practising barristers.

CPD Activities

120. The LCLCBA queried whether public access courses should count as CPD as it also led to a separate “qualification” and would therefore **‘involve it being counted twice’**

**BSB response**

121. The BSB does not see a compelling reason to prohibit activities which lead to a barrister gaining a separate qualification also counting towards CPD. Indeed relevant Masters Courses and PhDs can also count towards a barrister completing their CPD requirements.

Altering the plan and changing learning objectives

122. A number of respondents queried whether it was possible to alter the plan or amend learning objectives mid-way through the year.

**BSB response**

123. As noted on pages 4, 13 and 14 of the Guidance a barrister's learning objectives can be altered through the year if appropriate. This was also stated at paragraphs 69 and 72 of the 2015 consultation response.

**Spot checks**

124. The LCLCBA questioned how spot checks would be carried out and how much time a barrister would have to respond.

**BSB response**

125. The BSB would anticipate that a reasonable period would be not less than two weeks for a barrister to submit appropriate materials to demonstrate compliance with the CPD requirements.

**Bar Council response**

126. The Bar Council has provided a lengthy response to the 2016 Consultation that also raises concerns about the principles underpinning the proposed new scheme. These principles have undergone a considerable period of consultation and engagement with the profession including the 2015 consultation process.

127. The Bar Council was specifically contacted in 2015 by the BSB to provide a response to the 2015 consultation. This included the BSB following up with the Bar Council after the original deadline had passed to confirm whether or not the Bar Council wanted to submit a response. This was done in order that we could receive useful input from the overall representative body of the profession about the principles and proposed operation of the new CPD scheme.

128. The Bar Council provided a specific written response stating they had decided not to respond to the consultation as they felt responding to the 2015 consultation was better left to individual practitioners:

*"In fact the Bar Council (specifically the Education and Training Committee) decided not to put in a response to this consultation, as the consultation was aimed at individual members of the profession. Many thanks for following up".*

129. It is therefore unfortunate that the Bar Council has now decided to respond to the 2016 rules consultation by highlighting concerns about the principles and operation of the proposed new CPD scheme that should have been more properly (and usefully) raised in the 2015 consultation.

130. In the interests of ensuring that the concerns of the profession's representative body are addressed we set out below a specific response to those issues not otherwise addressed in the consultation response.

**General overview of the proposed scheme**

131. The Bar Council's general overview of the new scheme is critical on the ground that the current scheme has allowed the majority of barristers to demonstrate compliance with their CPD requirements.

**BSB response**

132. The BSB's overriding duty is to assure the public that a barrister is up to date with the law as relevant to their practice and maintains high standards of skill and competence. While the current CPD requirements do have high levels of compliance the BSB does not believe the current scheme does enough to accurately assess whether a barrister is completing useful or relevant CPD. The focus of the current scheme is far more on the number of hours completed than the substance of the activity.
133. Therefore an argument based on compliance levels with the current requirements is less relevant than whether the current requirements are fit for purpose.
134. Rather than continue with a prescriptive and cumbersome "one size fits all" CPD scheme the BSB has chosen to develop a more flexible scheme that will reflect the needs of every individual barrister and allow the BSB better to assure the public of barristers' continuing competence.

**Administrative burden**

135. The Bar Council asserts that the proposed new scheme will impose a greater administrative burden on barristers than the current scheme.

**'At present the administrative burden on the practitioner when engaging in CPD amounts to a requirement to record activity personally. It is a simple arithmetical exercise that does not entail the demonstration of the qualitative value of CPD. There is good cause for this. CPD is only accredited for events that meet a certain standard; assessment of the virtue of a particular CPD activity is a completely subjective exercise that would be costly to perform and immensely unpopular.'**

**The Bar Council firmly opposes any proposal to impose a further administrative burden on practitioners. In particular, we object to the proposal that some form of self-assessment should form part of the CPD requirements: this is unnecessary to begin with, will be time consuming for practitioners, and will often be completely pointless as the year's practice changes'.**

136. The Bar Council also stated that the new scheme was disproportionate to the aims of the scheme and does not provide a standard by which barristers can be assessed.

**'If the target of this regulation is the very small number of barristers who do not keep themselves up to a required level of competence, then why not focus upon those barristers under the current regime, rather than devise a completely new regime that will distract and frustrate the compliant majority?'**

137. The Bar Council believed that instead barristers would attempt to 'game the system':

**'..a barrister will, in order to comply with the new system, craft a set of targets that borrow linguistically from the examples given in the Guidance. It is unlikely that the typical barrister will stand any realistic chance of adhering to those targets, because the exigencies of practice will intervene. The barrister will therefore have wasted time both in setting out the targets and then in explaining how he or she was unable to meet them.'**

**BSB response**

138. From an administrative point of view it is not clear that the proposed scheme will lead to a greater burden.
139. Producing a plan at the beginning of the year front loads some of the administrative exercise a barrister has to complete. However this should be weighed against the time and money saved by no longer needing to find, book, pay for and attend activities simply in order to make up the prescribed number of hours without question as to their relevance.
140. It also acts as a tool to allow barristers more accurately to focus on the type and amount of activities that are appropriate to their individual practice.
141. In addition there are specific demographics within the profession that the Bar Council has ignored in its estimation that the proposed scheme will be more burdensome.
142. For example barristers returning to practice from maternity or paternity leave will no longer need to apply for waivers or indeed contact the BSB to determine how their CPD requirements should be pro-rated. They will be able to make their own assessment as to their training needs.
143. The position is similar for those barristers returning to practice from illness.
144. Equally barristers retaining a practising certificate in England and Wales but practising overseas no longer have to take time to seek out and attend the comparatively rare BSB accredited activities that are hosted in countries outside the UK regardless of their relevance.
145. Generally planning ahead is considered an efficient way of ensuring tasks are prioritised and completed effectively. This is particularly the case where time is a scarce resource, for example a barrister with a busy practice. It is surprising therefore that the Bar Council believes that in the narrow area of a barrister completing their CPD for the year planning ahead loses its efficacy.
146. It should also be noted that currently NPP barristers have to complete 45 hours of CPD. They also need to complete two and potentially three compulsory courses. These requirements can be completed at any point over a three year period but the compulsory courses run at only limited times and locations through the year. It is up to the NPP barrister to plan their time accordingly in order to complete their requirements. Barristers are therefore not unfamiliar with the benefits of planning their CPD activities in advance.
147. Catching out a small number of non-compliant barristers is not the target of the regulations. They are designed to meet the regulatory objectives and improve the practices of the profession. The BSB is confident that if engaged with correctly this scheme will add additional benefit for all barristers, including those who are compliant with the current scheme.
148. The Bar Council appears to hold the view that barristers will set themselves up to fail rather than try and use the proposed new system constructively by setting a series of targets that will provide structure to their training and development. The Bar Council provides no evidence as to why a barrister would have a motivation to do this. The BSB's starting point, based on experience, is that the majority of barristers take pride in excelling in their practice and if provided with tools to be able to do this will use them.

149. With regard to the standards that CPD compliance will be assessed against, the rules and guidance, including examples of compliance provide a great deal of detail as to how barristers can be compliant with the CPD requirements.
150. In addition the pilot scheme which was run without the benefit of updated guidance provided that the vast majority of participants (69 of 76 barristers) were able to complete compliant CPD Plans. In particular the reflection stage of CPD was compelled to a high standard.
151. Barristers also recorded higher levels of CPD activities completed, averaging 28 hours of CPD compared to the current average of 13 hours of CPD completed. This is in line with the LETR research which indicated that:

**“Encouraging and rewarding voluntary CPD activity over and above necessary existing level of compulsion is the most effective means of propagating good practice”**

*Qualitative assessment of CPD*

152. The Bar Council was also critical of the new scheme on the basis that barristers are currently unable to make qualitative assessments of the requirements of their practice or their training needs.
153. The Bar Council notes:
- “Extensive additional training will be required to help barristers to make qualitative assessments about their own CPD requirements”.**
154. As previously noted the Bar Council stated that the current CPD requirements were a simple arithmetical exercise.
155. However the Bar Council also notes:

**‘In some cases, the number of hours may be a relatively insignificant factor in relation to the quality and effectiveness of the particular CPD activity; in others, it may be inevitable but unpredictable. Perhaps just as importantly, the availability, length and quality of courses are outside barristers’ control, and may be difficult to predict at the start of any particular year.’**

156. The Bar Council also stated that any qualitative assessment should be made through a framework determined by the regulator.
- ‘... accreditation of CPD providers should act as a quality assurance mechanism. It ought to ensure that totally specious activities do not count towards CPD. The terms verifiable and non-verifiable are also subjective. This proposal clearly shifts the burden to the profession to undertake a type of accreditation for their CPD activities.’**

**The BSB response**

157. The BSB does not agree with the Bar Council’s assertions that the current scheme is simply an arithmetical exercise.
158. Barristers already make at least minimal qualitative value judgements with regard to choosing their CPD. This is why practitioners choose activities relevant to their area of

practice rather than other activities even where alternative activities may provide more CPD hours.

159. Equally engaging in CPD is not a simple arithmetical exercise otherwise we would uniformly see every barrister completing 12 hours of CPD. Barristers complete a wide number of hours both more than and less than 12 hours. Clearly there is already an assessment of what training is required occurring on some level in the profession.
160. The Bar Council itself seems to have somewhat inconsistent view of how significant hours are to completion of CPD and acknowledges that the quality and effectiveness of a course are sometimes more important.
161. The BSB is puzzled by the Bar Council's assertion that within the current CPD scheme accreditation acts as an overarching quality assurance mechanism for the EPP. The majority of EPP barristers' requirements do not need to be accredited. For potentially two thirds of the activities completed a barrister needs to make a value judgement as to how worthwhile they are and cannot rely on accreditation.
162. In addition as a point of regulation, within the *current* CPD regime a barrister should not be treating the CPD process as a simple arithmetical exercise nor solely relying on the accreditation of a course before they complete an activity. This is confirmed in the current definition of CPD which is found on pg 3 of the CPD guidance.
163. To clarify, if a barrister who only practices in area A and had no intention of going into another area of practice completed 12 hours of CPD by attending seminars in area B, simply as a means of completing the minimum hours of CPD, then they would be in breach of the *current* CPD requirements.
164. Having demonstrated that barristers should and do already make qualitative assessments of their CPD requirements the BSB cannot agree that it would require extensive training for the profession to make a written qualitative assessment of their training requirements at the beginning of the year.
165. Nor does the BSB believe that it should be for the regulator to make the initial qualitative assessment for individual barristers of which activities an individual should attend.
166. The BSB guidance does provide a framework to aid barristers in making an assessment of quality, for example considering different types of CPD activities and reflecting on how a particular activity has met a learning objective will aid a barrister in assessing quality of CPD activities over their careers.
167. However, the BSB will also produce additional supporting material demonstrating how barristers can begin to make an assessment of quality of CPD activities.

*Explaining the new system of regulation to the profession*

168. The Bar Council commented that:

**'The consultation document does not explain how the BSB intends to explain the new system of regulation to the profession.'**

**BSB response**

169. The Bar Council is correct that the 2016 consultation, which focuses on the narrow question of how the proposed rules and regulations support the proposed new scheme, does not explain how the BSB intends to explain the new system of regulation to the profession.
170. However we would draw the Bar Council's attention to the 'Future Bar Training Continuing Professional Development Consultation Report' of 17 March 2016 which noted at paragraph 29 that:
- “An education and engagement programme will be run in the Autumn of 2016 so that the profession is clear about what is expected in the new CPD scheme”**
171. Further to that members of the profession are being invited to attend a series of roadshows which are being held across the country. These roadshows will explain the new scheme in detail and give barristers an opportunity to ask questions. There will be follow up workshops in January-April once the new scheme has gone live and barristers are completing CPD plans.
172. In addition the BSB will be further engaging with the Bar Council and other Membership organisations to provide more detailed support to the profession.

**BSB Proposals**

- Guidance and rules will be amended in the light of comments made by respondents
- Templates for completing the relevant documentation will be provided
- Application to the LSB to approve the proposed rules and regulations will now proceed.