

BAR  
STANDARDS  
BOARD

REGULATING BARRISTERS

## **Review of Continuing Professional Development**

Consultation Paper on the proposed new system for CPD

**June 2011**

**BAR STANDARDS BOARD**

**REVIEW OF CONTINUING PROFESSIONAL DEVELOPMENT  
CONSULTATION PAPER ON THE PROPOSED NEW MODEL FOR CPD  
FOR THE BAR**

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## **Part 1: INTRODUCTION**

### **Approach to the Review and Related Work**

1. The Bar Standards Board ('the BSB'), the independent regulatory arm of the Bar Council, made a commitment in 2007 to review all stages of education and training for the Bar. This has taken place between 2007 and 2011 in the form of a three stage review of the Bar Course, Pupillage and Continuing Professional Development ('CPD')<sup>1</sup>. The Review of CPD (January 2010 – May 2011) represents the final phase in this systematic review, which has taken place under the chairmanship of Derek Wood CBE QC.
2. During 2010-11, the current system of CPD was examined in depth and from first principles by a specially appointed Working Group comprised of practising barristers, a member of the judiciary, representatives of BSB and Bar Council Committees and representatives of other professions. The Review focused on the purpose of CPD and the overall merits and defects of the current system required for all practising barristers from 2005. Comparisons with other professions' requirements were undertaken. After full and careful consideration and extensive consultation with interested parties primarily through meetings and discussions, the Report presents an analysis of issues needing to be addressed, as well as proposals for a new model in terms of hours and activities for CPD for practising barristers.

### **Structure of the Consultation paper**

3. Following this introduction, further information is provided about the Review and the work undertaken, indicating the process by which the recommendations of the CPD Working Group were arrived at. A number of specific consultation questions are posed, which relate to the recommendations made by the Working Group, and accepted in principle by the BSB at its meeting on 19 May 2011. The BSB decided that the recommendations and proposals, which focus on a proposed new model for CPD, although accepted in principle, should be subject to consultation with the profession before further steps are taken towards the implementation of a revised model and requirements for CPD. The Report of the Working Group is presented (Appendix A), together with a new draft CPD Handbook (Appendix B), a summary sheet (Appendix C – 'CPD At a Glance') and the associated Equality Impact Assessment (Appendix D).

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<sup>1</sup> For details of the Review of the Bar Course (2007-08) see the Wood Report on the BVC and the Handbook for the Bar Professional Training Course: (<http://www.barstandardsboard.org.uk/Educationandtraining/aboutthebvc/bvcconsultation/>). For details of the Review of Pupillage (2008-10) see the Wood Report on Pupillage (<http://www.barstandardsboard.org.uk/news/newsarchive/542.html>) and the Pupillage Handbook.

### **Responses to this Consultation paper**

4. A list of those to whom this consultation is being sent is attached at Appendix E. This list is not intended to be definitive or restrictive. Responses are welcome from all those who may have views or evidence relating to the issues raised in this paper.
5. It would be helpful if responses could be fully presented with detailed reasons given for comments, as well as any underlying evidence.
6. The BSB will summarise the responses received and will normally publish responses on its website. If you do not wish your response to be published, please make that clear in your response.
7. Responses should be submitted by 30 September 2011 and should be sent to:

CPD Consultation  
Bar Standards Board  
289-293 High Holborn  
London WC1V 7HZ

Or by email to: [CPDconsultation@barstandardsboard.org.uk](mailto:CPDconsultation@barstandardsboard.org.uk)

## Part 2            OVERVIEW

### Context

8. The Review was carried out by a distinguished Working Group under the chairmanship of Derek Wood QC. A very thorough and detailed investigation (with extensive consultation and research) took place, for which see the Report of the Working Group at Appendix A to this document. In summary, the Review found that there is currently an abundance of CPD activities and events, including both accredited and unaccredited events. The current requirement is that 4 out of the required 12 hours CPD each year must be on accredited courses. Fees are currently payable for BSB accreditation which, together with fees received for waivers and extensions, as well as fines for non-compliance, generate an income stream for the BSB. Comparisons with CPD systems and requirements of other professions were carried out, showing wide variations in the amount of CPD, types of acceptable activities, accreditation systems and methods of recording, monitoring and enforcement. For example, private study and experience in the workplace are acceptable in some professions for CPD purposes.
9. There are general aims and purposes which CPD is intended to promote: the development of relevant knowledge and skills in a practitioner's area of practice; keeping up to date with new developments in that area; giving confidence to recipients of services and the public that professionals are competent in their area of practice; and maintaining an ethos of professional collegiality which advances knowledge, skills and good practice (see Report paragraph 117). In addition, there is good evidence that CPD is effective in promoting those purposes, provided that it is sufficiently flexible and tailored to the individual's professional needs. Current monitoring systems show that about 200-300 barristers do not comply with all obligations each year (for which they are disciplined by the BSB), and the present scheme is criticised on various grounds, including the number of hours required, the list of approved activities, variable quality, formality, bureaucracy and expense. A new model for a more flexible system has therefore been proposed by the Working Group.
10. For the better achievement of the purposes of CPD, a five-fold strategy has been recommended which:
  1. increases the range of approved CPD activities;
  2. correspondingly increases the number of CPD hours which established practitioners must undertake each year;
  3. raises the standard of record-keeping;
  4. simplifies the system of reporting; and

5. simplifies enforcement of the CPD Regulations.

See Chapter X of the Report especially paragraph 90 (page 49 of this consultation document) for details and discussion of the way in which the aspects of this strategy are inextricably linked together.

### **Approach of the Bar Standards Board**

11. Earlier legal education Reviews, also Chaired by Derek Wood QC, of the Bar Course and Pupillage affected students and their initial education. This Review of CPD and any proposed changes to the current system will affect all existing and future practitioners. Although the recommendations were accepted in principle by the BSB, this consultation is therefore taking place to seek views of all those likely to be affected, including consumers and clients as well as the Providers of Legal Services. Not only will changes to the systems and practices be required if the proposed new model is adopted, but changes to the Code of Conduct will also be necessary (itself currently the subject of a consultation process). Draft rule changes will be necessary in the event of the recommendations of the CPD Working Group being accepted for implementation. Aspects of the proposals, especially any changes to the Code of Conduct, will also need LSB approval.
12. The Report of the Working Group, together with the Recommendations, Handbook and short summary ('CPD at a Glance') are accordingly here being circulated amongst the profession and other interested parties for a three month period. After consideration of responses, the draft CPD Handbook will be revised in the light of the comments and formally adopted by the Board. Details of any new system should be submitted to the LSB for approval with a view to its coming into effect on 1st January 2013.

### **CPD and Authorisation to Practise**

13. The proposed linkage between CPD and Authorisation to Practise also requires careful consideration, both in terms of interim measures and longer term plans. The BSB has consulted and drafted new practising certificate rules which introduce an 'authorisation to practise regime'. It is anticipated that all barristers applying for a practising certificate for 2012-2013, will be subject to the new rules and will be required to confirm their details, status, entitlement to practise, insurance and CPD on applying for authorisation to practise. The rules state that a practising certificate may be refused if a barrister has not complied with the CPD regulations. It should be noted that there are some ongoing cases of CPD non-compliance, and interim arrangements may be necessary. This will also be needed in relation to the New Practitioners Programme ('NPP') which is currently based on a three year cycle.
14. The consultation on authorisation only considered the principle of whether completion of CPD should be linked with the practising certificate. Further work

on the CPD Review and associated consultation will therefore consider exactly how any new approach might be put into practice and made operational.

15. In view of the time needed for consultation and obtaining the necessary permissions (eg from the LSB), it is likely that any new CPD regulations would apply from January 2013, linked to new compliance requirements applying for authorisation renewals from 1 April 2014.
16. The new authorisation regime will require barristers to confirm compliance with the CPD regulations. This provides an opportunity to underline the importance of CPD compliance as an intermediate step before the introduction of the more robust system in future. It is proposed that a proportionate approach would be to require all barristers to complete a simple declaration relating to their CPD requirements on applying for authorisation (*'I confirm that I am up to date with my CPD requirements and have submitted a Record Card as required by Annexe C of the Code of Conduct'*). A barrister would answer this question either yes or no and (in 2012) would not be refused a practising certificate if they confirmed non-completion of hours, although this would be recorded and reasons would need to be given, as well as remedies for the situation. It is proposed that no action would be taken against a barrister who on applying for authorisation states that they have not completed CPD for 2011 and 2012. These would be dealt with under existing procedures.

### **Equality Impact Assessment**

17. As with the Reviews of the Bar Course and Pupillage, considerable attention was paid to Equality and Diversity issues throughout the course of the CPD Review, with the inclusion of specialist expertise on the Working Group, as well as meetings and discussions with interested groups (such as the Equality & Diversity Committees of the Bar Council and the BSB.) An Equality Impact Assessment was developed in tandem with proposals being considered, particularly with regard to certain categories and possible cost implications. The EIA is attached as Appendix D.

### **Risk implications**

18. There are risks (mainly reputational) attached to the possibilities of not having an effective CPD system in place or of not having effective monitoring and regulation of the CPD system.

### **Regulatory objectives**

19. The proposed amendments will meet the regulatory objectives set out in the Legal Services Act 2007 in terms of ensuring the protection and promotion of the public interest and the interests of individual consumers of the services delivered by those who undertake the training.

### Part 3           CONSULTATION QUESTIONS

20. The aim of the consultation questions is to determine the level of agreement with the recommendations put forward by the CPD Working Group.

- Q1     Do you think that the fundamental approach to CPD requirements should continue to be based on a system defined by the number of hours of CPD undertaken annually?
- Q2     Do you agree with the proposed new approach for CPD that will, as a single but five-fold strategy (1) increase the range of approved CPD activities; (2) increase the number of CPD hours per annum; (3) raise the standard of record-keeping; (4) simplify the system of reporting, and (5) simplify enforcement of the CPD Regulations?
- Q3     Do you agree that with the more flexible definition of CPD (Report paragraph 117) the required number of hours should be increased from 12 to 24 hours per annum?
- Q4     Do you think that (if more hours are required) acceptable activities should include private study, relevant professional and personal skills, and a wider range of training activities than is currently accepted?
- Q5     Do you agree that there should be no compulsory CPD topics for established practitioners, but a balance of activities must be undertaken?
- Q6     Do you consider that the current system of applying for extensions of time should be continued?
- Q7     Do you agree that there should be no waivers of CPD requirements for barristers who wish to retain their practising certificates?
- Q8     Has the system of accreditation of CPD providers and courses by the BSB outlived its usefulness, indicating that it should be replaced by the proposed system of barristers recording their own 'verifiable' and 'non-verifiable' activities?
- Q9     Would a new system based on a barrister's **Declaration** on application for the renewal of the practising certificate, together with retention by the barrister of a **Portfolio** recording CPD activities (for monitoring and sampling purposes) be an effective means of ensuring CPD compliance?
- Q10    Should the New Practitioners' Programme be retained substantially in its present form but based on an annual return as opposed to over a three year period?
- Q11    Should the Forensic Accounting Course be retained substantially in its present form (but with some improvements to content and delivery)?
- Q12    Do you have any other comments on any of the recommendations or the proposed new system as detailed in Chapter XVI of the Report or in the draft Handbook?



## **Appendix A The Report of the Working Group**

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**BAR STANDARDS BOARD**

**REVIEW OF CPD**

**Report of the Working Group**

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INTRODUCTION

1. Paragraph 202 of the Code of Conduct for the Bar of England and Wales entitles a person who has been called to the Bar to practise as a barrister if (among other things) –

- “(a) he has complied with any applicable training requirements imposed by the Bar Training Regulations which were in force at the date of his Call to the Bar;*
- (b) he has complied with any applicable requirements of the Continuing Professional Development Regulations (reproduced in Annex C);*
- (c) he has a current practising certificate issued by the Bar Council in accordance with the Practising Certificate Regulations (reproduced in Annex D).”*

2. This Report is concerned with requirement (b). Requirement (c) is also referred to and discussed. Continuing Professional Development is referred to as CPD. The current CPD Regulations are annexed to this Report as Annex 1.

3. Since 1<sup>st</sup> January 2006 the regulation of education, training and qualifications for practice at the Bar, and responsibility for the discipline of the profession, have been vested in the Bar Standards Board (BSB) as the profession’s independent regulator. It is established as a separate body under the Standing Orders of the Bar Council and has its own constitution. Its responsibilities include laying down and enforcing the requirements for CPD.

4. The CPD Regulations (after a transitional period which has expired) now require all barristers to complete 45 hours of CPD during their first three years of practice and, after that, 12 hours of CPD during any year in which they hold a

practising certificate. The Regulations do not however define CPD. Regulation 8 states that the Bar Council may, by resolution, specify the nature, content and format of courses and other activities which may be undertaken by barristers (or any category of barristers) to satisfy these requirements. This function has been delegated to and is now discharged by the BSB.

5. The manner in which the requirements are to be complied with, and the general administration of the scheme, are set out in an Information Pack issued by the BSB, last updated in January 2011. Annex D to this Information Pack is entitled “Compliance with CPD Regulations ‘A General Guide to CPD’ ”. We refer to this document as “the CPD Guide”. It opens with the following general definition of CPD

–

*“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 areas of practice and in order to keep themselves up to date and maintain the highest standards of professional practice”.*

Six pages of text then set out the categories of “work” which will, and the categories which will not, be recognised as compliant with the Regulations, according to that definition.

6. Since 2007 the BSB has been engaged on a systematic review of education and training of the Bar. It has previously commissioned and received reports on the Bar Vocational Course (now called the Bar Professional Training Course) (2008) and Pupillage (2010). New regulations and handbooks giving effect to those reports came into force in September 2010. A third working group was established by the BSB to produce this Report, on CPD, as the final review in the series.

7. The terms of reference of the working group are set out in Annex 2. The membership of the working group is listed in Annex 3. Our terms of reference required us to conduct a full inquiry into all aspects of CPD including its underlying

rationale as well as the manner in which it is currently managed and enforced by the BSB. To fulfil that requirement we have held face-to-face meetings with and received written submissions from the individuals listed in Annex 4. We have also taken into account published reports and material listed in Annex 5. The group has met on 16 occasions and also held an away weekend in October 2010.

### **Acknowledgements**

8. We are extremely grateful to all those who have taken the time and trouble to meet us and to write to us. Their contributions have been indispensable.

9. We have been superbly supported by officers of the BSB – Dr Valerie Shrimplin as Head of Education and Training, Elizabeth Prats, the BSB's Continuing Education Officer, and the Continuing Education Assistant Ruth Swinden. Other officers of the BSB have provided valuable information and guidance at our meetings. They are named in Annex 4. Running the Bar's CPD scheme, we have found, is a complex area of the BSB's activities. It would have been impossible to write this Report without the knowledge and experience of these officers.

### **This Report**

10. This Report is structured as follows. Chapters II to VI describe the genesis of CPD at the Bar, the detail of the current requirements and the financial implications of the present scheme. Chapter VII draws comparisons between the CPD requirements for the Bar and those for other professions. In Chapter VIII we discuss the purpose and effectiveness of CPD; and Chapter IX sets out criticisms which are made of the present CPD requirements. Chapters X to XIII set out our own views on the scheme of CPD for the Bar, in so far as it applies to established practitioners, and our recommendations for change. In Chapters XIV and XV we discuss the New Practitioners' Programme and the Forensic Accounting Course, both of which must be undertaken by new recruits to the Bar. Chapter XVI contains a summary of our findings, conclusions and recommendations.

## I: INTRODUCTION

11. The Report is accompanied by a draft Handbook showing how, in the working group's view, the Bar's system of CPD should function in the future, for both established and new practitioners. The Handbook is supplemented by a short guide to our proposals: "CPD at a Glance". The Report and Handbook complement each other and should be read together.

### **Consultation**

12. Both documents will be subject to consultation and consideration by the profession and other interested parties.



II

**CPD AND THE BAR**

13. A requirement that practitioners should undertake CPD (variously named) is widespread throughout most professions in the UK, Europe and the USA. It received slow acceptance at the Bar. A need for CPD having been recognised by the Ormrod Committee (1971) and the Royal Commission on Legal Services (1979), a joint committee of the Bar and the Council of Legal Education (Southwell (1987)) proposed advocacy training and further education in substantive law for new entrants. This initiative caused the Marre Committee (1988) to remark that the Bar was moving in the right direction. The Roskill Committee's Report on Fraud Trials (1988) gave further encouragement to the introduction of CPD. The reports of working parties set up by the Bar Council (Potter (1990) and Potter/Southwell (1991)) then developed proposals for CPD for new practitioners with a view to compulsory CPD being introduced for all in due course.

14. An important milestone was the detailed Report of the Lord Chancellor's Advisory Committee on Legal Education and Conduct (ACLEC) published in 1997. This powerful Committee, chaired by Lord Nicholls of Birkenhead, comprised a distinguished and multi-disciplinary membership. It noted that the Law Society had made substantial progress in introducing CPD for solicitors. By contrast the Bar Council, in its response to ACLEC's consultation paper, declared its opposition to any form of compulsory CPD for established practitioners at the Bar. ACLEC disagreed and recommended a phased extension of CPD to all practising barristers.

15. Two successive Bar Council Committees (Southwell (2000) and Glick (2000)) gave effect to ACLEC's recommendations. The combined work of these two groups (with some amendments) produced the regime which is now binding on all

## II: CPD AND THE BAR

practising members of the Bar, whether they are self-employed or employed barristers. CPD for all began in 2005.

### III: THE CURRENT CPD REQUIREMENTS

#### III

#### THE CURRENT CPD REQUIREMENTS

16. There are three distinct elements in the Bar's current CPD programme.
- The Forensic Accounting Course (FAC) which (if not undertaken in pupillage) must be completed within the first 3 years of practice.
  - The New Practitioners Programme (NPP) which must be completed within the first 3 years of practice.
  - The Established Practitioners Programme (EPP) which all practitioners must complete annually for so long as they hold a practising certificate.
- Apart from the Forensic Accounting Course, the CPD requirements are measured in hours.
17. New practitioners must complete 45 hours of CPD in their first 3 years of practice, consisting of at least 9 hours of advocacy training, 3 hours of ethics and 33 hours of other "accredited" CPD. An earlier limit of 42 hours was raised by the Bar Council in 2004 to include an additional 3 hours of training in advocacy.
18. Established practitioners must complete at least 12 hours of CPD every calendar year of which at least 4 hours must be "accredited".

#### **Accreditation**

19. The concept of accreditation was introduced in 2000 by the Southwell committee. The process is handled by the staff of the BSB, overseen by the CPD Sub-Committee of the BSB's Education and Training Committee. An activity is "accredited" if it consists of a course or event which has been accredited as such by the BSB. Organisations may be recognised as accredited providers. Except in the case of the Inns of Court, an annual fee is charged for accreditation: £400 or (if courses are delivered without profit to the provider) £100. The Circuits, Specialist

### III: THE CURRENT CPD REQUIREMENTS

Bar Associations (SBAs), barristers' chambers, and all other organisations are charged accordingly. The CPD Sub-Committee has the power to waive the whole or part of an annual fee.

20. Accredited organisations may provide up to 15 courses or events without further payment. A fee of £25 is charged for each additional course above that number. Providers who pay the reduced fee of £100 are not limited to 15. All courses and events provided by accredited organisations must also be individually accredited. An unaccredited provider (which may include an individual practitioner) must pay a fee of £45 to have an individual event accredited, but unaccredited providers are not normally permitted to accredit more than one course a year.

#### **Approved activities**

21. The system of accreditation interlocks with rules which prescribe which activities can and cannot count for CPD. The Tables below are derived from the current CPD Guide.

### III: THE CURRENT CPD REQUIREMENTS

**TABLE 1: ACTIVITIES WHICH COUNT**

<b>Activity</b>	<b>Comment</b>
Attending an accredited course	
Attending a university course	Law or directly relevant to practice
Preparing and delivering a lecture	1 hour + 1 hour for preparation 2 hours + 2 hours for preparation No claim for repeat delivery in same calendar year
Online courses	Must complete online test before hours can be allocated. Certificate to be attached to record card.
DVDs, videos and CD ROMs	Only if issued by BSB approved producer or accredited CPD provider. Record to be produced.
Attending courses run by CPS, JSB and Ministry of Justice (MoJ)	
MoJ Judicial Work Shadowing Scheme & ELA Employment Tribunal Shadowing Scheme	2 CPD hours accredited. [Removed January 2011]
Pupil supervisor training	Up to 2 CPD hours
Personal/time management course	Up to 4 CPD hours
Service as a Judicial Assistant	1 CPD hour per active month
Presenting an unaccredited lecture	
Teaching on university law course	Certificate from the university to be produced
Moots, mock trials and tribunals	Up to 2 CPD hours a year. School events do not count
Legal writing	Up to 4 CPD hours per year. Hours to be claimed in year of publication. Papers for moots count up to 2 hours. Book reviews do not count

### III: THE CURRENT CPD REQUIREMENTS

**TABLE 2: ACTIVITIES WHICH DO NOT COUNT**

<b>Personal development courses</b>	<b>Other</b>
Personal stress management	Acting as an external examiner
Presentation skills	Shadowing a judge
Voice coaching	Pro bono work
Mentoring or appraisal schemes	Working at a CAB
Listening to radio programmes	The Bar in the community scheme
Subscription to periodicals	Working as a member of a review panel
Reading	Acting as pupil supervisor
Networking skills	Sitting as a recorder
Marketing skills	Sitting as a JP
	Sitting on a Tribunal or other part-time judicial office
	Marking course work
	The "Speakers for Schools" programme
	Attending AGMs
	Careers talks
	Attending at a launch of legal materials
	Teaching on BTECs or ILEX level 1-3 courses

22. An activity which falls within Table 2 above cannot be accredited, and will not count even if it is provided by an accredited provider. Barristers cannot take it into account as part of their 8-hour non-accredited allocation.

**"Outside normal commitments"**

23. The definition in the CPD Guide excludes any activity, however educational, conducted as part of a barrister's actual practice. This may lead to some slightly paradoxical results. Appearing in a leading case in one of the higher courts cannot count. Attending a seminar on that case, after it has been decided, can. Similarly carrying out private legal research for a client does not count, but giving a lecture on the same subject, or attending a lecture given by somebody else, will.

### III: THE CURRENT CPD REQUIREMENTS

#### **Relevance**

24. The definition also requires the CPD activity to be “*relevant to* [the individual's] *present or proposed area of practice*”. This test has both negative and positive effects. In theory, at least, it should prevent practitioners from undertaking activities which have no bearing on their daily work, purely for the sake of accumulating hours. But it also opens up a very wide scope of activities which an individual may well judge to be highly relevant. This may include not just developments in general or specialist law, or in the administration of justice, but also instruction in areas of expertise outside the law with which a barrister in a particular field must have some acquaintance. Medicine, international trade, banking, accountancy, valuation, forensic science, and building design and construction are obvious examples. Then, apart from the accumulation of knowledge, barristers may legitimately need to develop a range of personal skills, some of which are listed in Table 1.

25. The BSB calls relevance into question when it is asked to accredit a course or event. The CPD Sub-committee has developed some custom and practice in dealing with this issue. For example anything which smacks of career development, such as courses on applying for silk or judicial appointment, or interview techniques, are not at present thought to be relevant to practice. A barrister's individual CPD return may, at least in theory, also be challenged on the same ground. A moment's reflection however will show that the borderline between what is relevant and irrelevant for any individual, or for barristers generally, is difficult to draw.

## IV: AVAILABILITY OF CPD

### IV

#### AVAILABILITY OF CPD

26. There is an abundance of accredited activities and events from which barristers can choose for completing their CPD requirements. The BSB has over time accredited some 1,000 providers, of whom about 600 actively provide CPD courses every year. Each year it is estimated that some 6,000 accredited courses and events (including online courses) are delivered.

27. Table 3 below shows the number and source of accredited events provided each month during 2010. Unsurprisingly, the number of events increases towards the end of the CPD year, particularly external events, and Chambers activity is greatest in October.

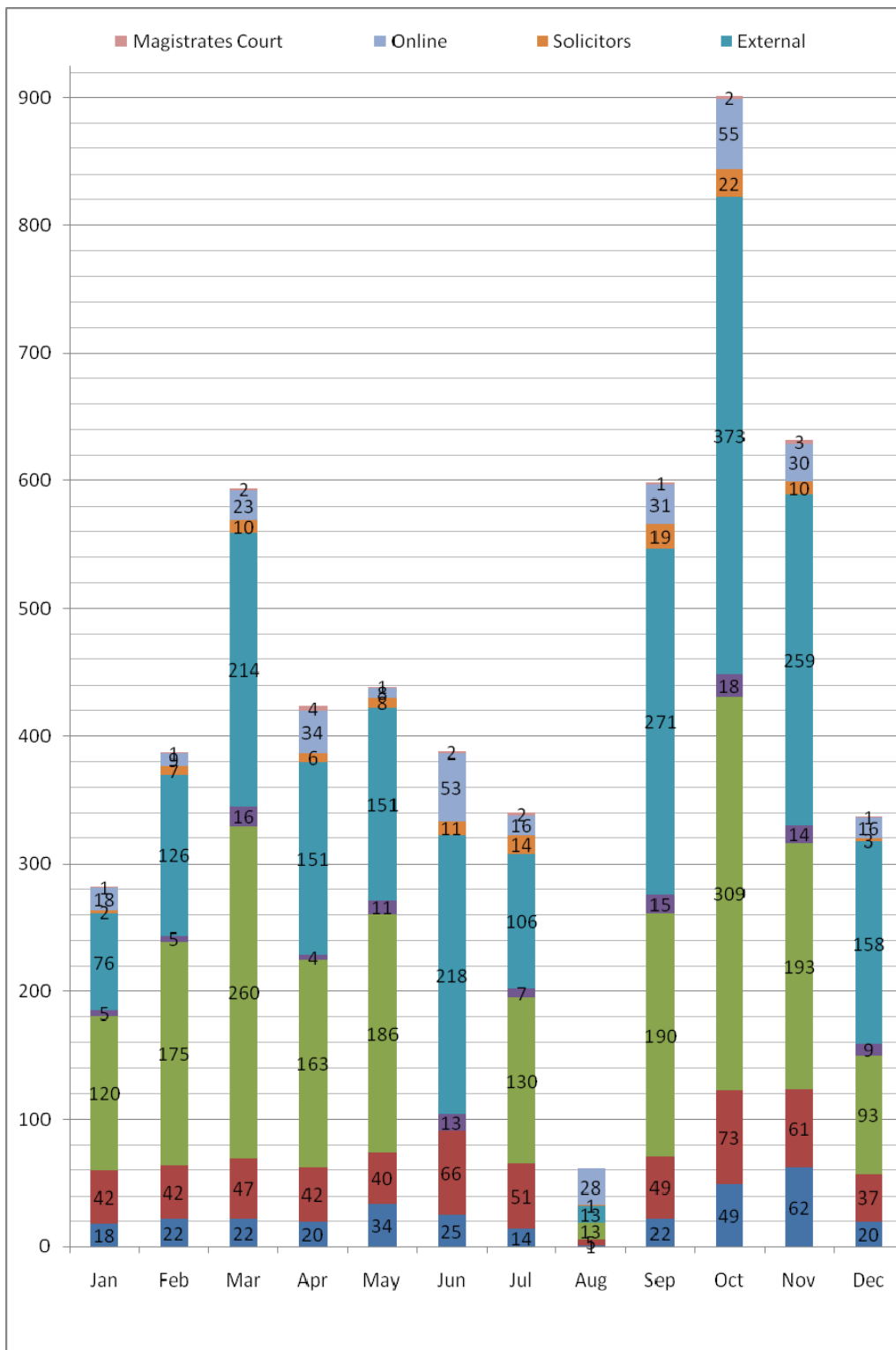
**TABLE 3: NUMBER/TYPE OF ACCREDITED EVENTS 2010**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Inns/Circuits/SBAs	18	22	22	20	34	25	14	1	22	49	62	20
GLS	42	42	47	42	40	66	51	5	49	73	61	37
Chambers	120	175	260	163	186		130	13	190	309	193	93
Universities	5	5	16	4	11	13	7		15	18	14	9
External	76	126	214	151	151	218	106	13	271	373	259	158
Solicitors	2	7	10	6	8	11	14	1	19	22	10	3
Online	18	9	23	34	8	53	16	28	31	55	30	16
Magistrates Court	1	1	2	4	1	2	2		1	2	3	1

See next page for representation in the form of a graph.



#### IV: AVAILABILITY OF CPD



#### IV: AVAILABILITY OF CPD

28. Also there are many ways in which barristers can accumulate unaccredited CPD points.

29. In 2008 Jonathan Hirst QC, the vice-chairman of this working group, reported to the Bar Council on the education and training events provided by the Inns, Circuits, SBAs and other institutions (Final Report November 2008). His general conclusion was that a wide range of high quality training is offered to most barristers by these bodies, and that there was healthy competition between them. Barristers were able to satisfy the 12-hour requirement without undue difficulty or expense. He also recommended that providers should co-ordinate their CPD activities and disseminate information about them more effectively. Inns, Circuits and SBAs were encouraged to post information about events on the Bar Council website, describing the event, name of speaker, venue, date, time, number of accredited hours and cost.

30. This recommendation was implemented by the Bar Council in February 2009. Experience to date shows again that the number of hits increases as the CPD year ends.

## V: MONITORING AND ENFORCEMENT

### V

#### MONITORING AND ENFORCEMENT

31. Attendance at the FAC and the NPP compulsory courses is recorded and returned to the BSB. Barristers attending other accredited events are required to sign an attendance sheet which the organiser returns to the BSB. Barristers are also required to complete a New Practitioners or an Established Practitioners form (as the case may be) giving the date and particulars of the course or other activity and the number of hours completed. The barrister must then certify that the relevant CPD requirements have been met.

32. At the end of June in each year, i.e. half way through the CPD year, the BSB sends to every holder of a practising certificate a reminder of the CPD requirements so that, if they have not already been met, the barrister can plan his or her activities for the rest of the year accordingly.

33. Signed forms must be returned to the BSB not later than 31 January following the calendar year for which the return is being made. In round terms there are 15,000 barristers in self-employed or employed practice who are required to return these forms. Each form is checked by a member of staff of the BSB to ensure that the requisite number of accredited and overall hours have been completed, that any activity for which a maximum number of allowable hours is specified has not been exceeded, and that the form is signed. There is at present no facility for returning record forms online. The process of checking takes between 2 and 3 months. If the form is satisfactory that fact is recorded against the name of the barrister held in the BSB's list of holders of practising certificates. No detailed cross-checking takes place against the attendance sheets for events accredited for the EPP. Cross-checks are carried out for NPP compulsory events.

## V: MONITORING AND ENFORCEMENT

34. Barristers who are unlikely to be able to complete the required number of hours in any year for some personal reason, such as maternity or paternity leave or taking a break from practice, may (if they do not suspend their practising certificate) apply to the Qualifications Committee of the BSB for a waiver. If a barrister's CPD requirements have not been (or are unlikely to be) completed in time he or she may similarly apply to that Committee for an extension of time. A fee of £135 is payable on the making of these applications. Between 1<sup>st</sup> January and 30 September 2010 88 waivers and 321 extensions of time were granted to established practitioners. For new practitioners the corresponding figures were 19 and 61 respectively. For the years 2008, 2009 and 2010 the number of applications for extensions and waivers considered by the Qualifications Committee CPD panel, were respectively 812, 616 and 531 with just 6, 4, and 5 being refused in those years. The number is falling and few are refused due to advice provided by the BSB before applications are made.

### **Defaulters**

35. Annual returns may be rejected for a number of reasons: not enough accredited activities, counting activities which are not approved for CPD, or just not enough hours. A small number of barristers do not submit a form at all.

### **Warning letters**

36. Defaulters who have not been granted a waiver or extension of time, once they have been identified, receive a warning letter of non-compliance. The first warning for the EPP is sent in March and a final warning (if required) in April. Barristers who continue to fail to comply with outstanding requirements after a final warning are referred to the BSB's Professional Conduct Committee [known as the Complaints Committee until 2011]. Those subject to the NPP receive a first warning 9 months before the programme ends (usually in March) followed by a second warning 4 months before the end (usually in September). A final warning is sent in March following the completion date, unless the barrister has been granted an

## V: MONITORING AND ENFORCEMENT

extension of time. In the latter case a final warning letter is sent after the extension has expired.

### **Penalties**

37. Two types of action are available in relation to those who default: administrative and disciplinary. In most cases, unless a barrister has previously defaulted on two or more occasions, a fixed penalty fine of £300 is imposed which must be paid within 28 days. The barrister is also required to remedy the relevant non-compliance within the 28 days, for example by submitting a completed record card or complete the hours outstanding. Consideration will be given to allowing the barrister additional time to cure the non-compliance but only where there is good reason. If the barrister pays the fine and cures the non-compliance within the stated period, no further action will be taken. The matter will be treated as an administrative issue only.

38. If a barrister fails to pay the administrative fine or cure the non-compliance (or has previously failed to comply with the CPD requirements on two or more occasions), a formal complaint will be raised against the barrister with a view to taking disciplinary action for breach of the Code. The complaint will be investigated and the Professional Conduct Committee (or a staff member acting under the authority of the Committee) will decide whether to refer the complaint to formal disciplinary action which can either consist of the Committee determining the charges with the consent of the barrister or the matter being referred to an independent Disciplinary Tribunal for determination. Proved charges will form part of the barrister's disciplinary record: they are posted on the BSB's website and are disclosable on certificates of good standing and in relation to applications for silk and judicial office.

39. A survey of cases over the first six months of 2010 shows that 160 administrative fines were imposed. In addition, in the same period, 119 disciplinary

## V: MONITORING AND ENFORCEMENT

cases involving non-compliance with CPD requirements were considered at a formal hearing, including 11 of the 160 referred to above.

40. Research has revealed that barristers who are sole practitioners are slightly over-represented within the internal complaints system, and that a slightly higher proportion of those complaints are either dismissed or result in no further action. Some of these complaints relate to CPD. In 2008, around 90% of cases of CPD defaults in this category were disposed of with no further action being taken.

Explanations for default included:

- personal difficulties;
- technical difficulties in obtaining evidence of completion of CPD;
- record card being sent but not received by BSB;
- ill health;
- financial reasons (i.e. not being able to afford courses associated with completing CPD);
- a cheque not being received for a course which led to the barrister losing the place and having to attend the next available course later.

Part of the explanation may be that sole practitioners do not enjoy the professional and administrative support to be found in a set of chambers or an office.

41. In Chapter XIII of this report we make some recommendations which might reduce the number of these cases.

## VI: FINANCIAL IMPLICATIONS

### VI

#### FINANCIAL IMPLICATIONS

42. CPD provides the BSB with revenue. Running the scheme incurs costs.

43. In 2008, 2009 and 2010 receipts from the scheme were as follows.

**TABLE 4: CPD INCOME**

	<b>2008</b>	<b>2009</b>	<b>2010</b>
Fees from accredited providers	<b>£10,200</b>	<b>£9,100</b>	<b>£10,500</b>
Fees from accreditation of courses	<b>£125,040</b>	<b>£164,995</b>	<b>£168,930</b>
Total accreditation income (management accounts)	<b>£135,240</b> <b>(£134,400)*</b>	<b>£174,095</b> <b>(£174,700)*</b>	<b>£179,430</b> <b>(£179,753)*</b>
Fines	<b>TBC</b>	<b>TBC</b>	<b>TBC</b>
Other (fees for extensions & waivers)	<b>£81,250</b>	<b>£65,550</b>	<b>£54,625</b>
<b>TOTAL (less fines)</b>	<b>£216,490</b>	<b>£239,645</b>	<b>£234,055</b>

*\*Figures as stated in the management accounts, which show income with other factors included.*

44. Costs are more difficult to calculate. For accounting purposes the BSB distinguishes between direct and indirect expenditure. Indirect expenditure is taken to be a fair allocation to the BSB's Education Department (the department primarily responsible for CPD) of a number of the fixed costs incurred in running the BSB overall. Part of the allocation to the Department is then attributed to CPD on the basis of the number of staff employed. These costs are set out in Table 5 below. However some of the income in Table 4 (fines, and fees for extensions of time and waivers) is treated as income of other departments; but the costs of those departments are not taken into account in Table 5. Table 5 shows that, balanced

## VI: FINANCIAL IMPLICATIONS

against the direct expenditure of the Education Department, the receipts from CPD yield a profit. That profit then makes a contribution to indirect expenditure, much of which (because it consists of the BSB's fixed costs) will be incurred in any event.

**TABLE 5: CPD COSTS**

	<b>2008</b>	<b>2009</b>	<b>2010</b>
<b>Direct expenditure</b>			
Staff costs	<b>£70,800</b>	<b>£79,400</b>	<b>£78,100</b>
Other costs	<b>£900</b>	<b>£1,700</b>	<b>£15,000*</b>
<b>TOTAL</b>	<b>£71,700</b>	<b>£81,100</b>	<b>£93,100</b>
<b>Indirect expenditure</b>			
Premises costs	<b>£11,700</b>	<b>£13,000</b>	<b>£14,300</b>
BSB Management	<b>£34,500</b>	<b>£41,700</b>	<b>£39,400</b>
Central services	<b>£51,100</b>	<b>£69,700</b>	<b>£76,700</b>
<b>TOTAL</b>	<b>£97,300</b>	<b>£124,400</b>	<b>£130,400</b>
<b>ALL EXPENDITURE</b>	<b>£169,000</b>	<b>£205,500</b>	<b>£223,500</b>

*\* This figure includes additional working group and monitoring costs.*



## VII: COMPARISON WITH OTHER PROFESSIONS

### VII

#### COMPARISON WITH OTHER PROFESSIONS

45. Attached as Annex 6 is a brief overview of the BSB's requirements compared with those of the Solicitors' Regulation Authority (SRA), the Institute of Legal Executives (ILEX) and other professions. It shows what in general terms is now expected of practitioners throughout the professions in the United Kingdom. We have looked at some professions in more detail.

#### **Other legal professions**

46. **Solicitors**, commended by ACLEC in 1997, are now regulated by the SRA. All solicitors and registered European lawyers must complete 16 CPD hours a year, at least 4 of which must be met by participating in accredited courses. The remaining 12 may be completed in a variety of different ways. Newly qualified solicitors and registered lawyers must complete one hour for each month of work in their first year of practice. In their first 3 years they must undertake a 7-hour management course, attendance at which counts towards the required total.

47. There are more than 150,000 solicitors on the Roll in England and Wales distributed, geographically, more widely than the Bar; and there is greater variety in the work which they undertake. The SRA is more flexible with its system of accreditation. Among other things it automatically accredits all courses accredited by the BSB. There are in all some 1400 accredited external and 1500 in-house providers. Providers, once approved, self-accredit their courses and no formal record is kept of the courses which are run. However a fee of £25 is payable for each course, and it is estimated from those receipts that 15,000 courses are provided each year. Approximately 25% of the courses are monitored each year by collecting delegate questionnaires, by attendance at courses by assessors and (in the case of new providers, or where there are complaints) by a review of course materials.

## VII: COMPARISON WITH OTHER PROFESSIONS

48. When solicitors apply for renewal of their practising certificate they sign a declaration that they have complied with the CPD requirements for the full calendar year expiring before the date of their application. If they cannot complete the declaration they are required to contact the SRA, and a date is agreed by which the shortfall must be made up. The SRA also reserves the right to carry out random sampling of training records.

49. In 2003 the Training Committee of the Law Society set up a small sub-group to examine critically the scheme we have just described. A draft consultation paper and questionnaire were produced, challenging the scheme on many of the grounds set out in Chapter IX of this report in relation to the Bar's scheme. Practitioners were to be invited to consider a more flexible system, emphasising personal professional development at the expense of accumulating a set number of hours of activity. The number of hours was also considered to be too small. The Law Society decided to take no action on the sub-group's report at that time. Its critique of the scheme remains in the hands of the SRA, which has recently announced that it is commissioning a review of its CPD requirements.

50. **The Irish Bar Council** introduced compulsory CPD for all practitioners, in the teeth of some protest, in 2005. The scheme is a much simplified version of that administered by the BSB. Ten hours of training must be completed each year ending on September 30<sup>th</sup>. Excess hours accumulated in August or September may be carried forward to the next year. A CPD activity for these purposes must be

- Of significant intellectual or practical content and must deal primarily with matters related to the practice of law.
- Conducted by persons or bodies that have suitable qualifications.
- Relevant to a practitioner's immediate or long term needs in relation to the practitioner's professional development.

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51. A wide range of activities will count, similar but not identical to those listed in our Table 1. All must be “approved”. Events organised by the Council of the Bar of Ireland, the King’s Inns, barristers themselves, advocates’ organisations in other jurisdictions, universities and certain other professional and state bodies are automatically approved. Other events must be approved by the officer of the Irish Bar Council who manages the scheme.

52. Irish barristers are required to keep a written record of compliance and to submit each year a simple form certifying that the requirements have been met. The rules contemplate an audit of individual records. A very high level of compliance is recorded.

53. **The Faculty of Advocates** regulates just over 460 practitioners at the Scots Bar. Compulsory CPD was introduced on 1<sup>st</sup> January 2004. Advocates are required to complete at least 10 hours of accredited CPD activities each calendar year. All hours must be undertaken at courses, conferences, symposia or similar events. Only attendance at an accredited event will count. Individuals may choose appropriate events for themselves from an on-line list. There is one relaxation of this rule: up to 3 hours, in the year of publication, may be claimed for writing a book or article.

54. Practitioners must sign a registration document at each event which is returned by the organiser to the Training and Education Department of the Faculty. The Department then compiles a record for each advocate. In addition advocates must compile and return a personal record in a form which, among other things, enables them to reflect on the utility and relevance of the activity undertaken. A sample of 25% is taken each year.

55. Scotland’s 10,500 solicitors are regulated by the **Law Society of Scotland**. Regulations made in 1993 under the Solicitors (Scotland) Act 1980 required members to complete 20 hours of CPD annually, of which 15 had to be undertaken

## VII: COMPARISON WITH OTHER PROFESSIONS

in “group study”. The remaining 5 hours were available for private study. There was a further mandatory split between “management” and “non-management” topics.

56. The Society has just completed a comprehensive review of its requirements. New rules, coming into force on 1<sup>st</sup> November 2011, will give members much greater autonomy in selecting activities relevant to their individual practice. The quota remains at 20 hours, with a maximum of 5 available, as before, for private study. There is no prescribed content for the 15 hours, but they must be “verifiable”. This means that they must (1) have educational aims and objectives relevant to the individual’s development; (2) have clearly anticipated outcomes; (3) have quality controls, for example by allowing feedback or questions to be asked; and (4) be verifiable in the sense that independent documentary proof of participation is available. Detailed guidance is given on all these points. Private study, such as reading law reports, journals or similar materials, must be recorded and justified in the same way as verifiable CPD. The avowed intention of these reforms is to escape from what was perceived to be a “tick-box” approach to compliance under the previous regulations.

57. Members are required to return their annual CPD record electronically to the Members’ Area of the Society’s website. Some 25% are sampled each year. A previous right to carry backwards or forwards one year’s surplus into adjacent years has been abolished.

58. In **Singapore** a compulsory scheme for the entire profession of some 4,000 advocates and solicitors is currently being introduced, to be administered by the Singapore Institute of Legal Education (SILE). It is proposed that experienced practitioners will be required to complete 12 hours of CPD. Lawyers of less than 5 years’ practice are to complete 16 hours. Qualified lawyers acting as locums must complete 10 hours.

## VII: COMPARISON WITH OTHER PROFESSIONS

59. As with the BSB there is a distinction between accredited (“public”) and non-accredited (“private”) activities. The process of accreditation is to be carried out by SILE. Of the 12, 16 and 10 hours referred to above, 4, 12 and 6 respectively must be “public”. Courses delivered by certain legal bodies and public institutions are automatically accredited. Other providers have to apply for accreditation. Attendance at events is to be recorded electronically and all returns will be collected on a database. CPD deficits in one year can be made up in the next year. Compliance with CPD is to be linked to the re-issue of a practising certificate, some flexibility being allowed to accommodate lawyers who have good reason for not being able to meet the requirements in any given year.

### **Accountancy**

60. There are several regulatory bodies governing accountants in the UK. **The Institute of Chartered Accountants in England and Wales (ICAEW)** oversees some 100,000 practitioners. Its approach to CPD is strikingly different to that of the legal profession. Members are required each year to maintain a personal record of their CPD activities and to certify to the ICAEW that they are fit to practise in accordance with their professional code. The ICAEW can call for practitioners’ records and ask for further information. No specific number of hours must be completed and practitioners are given a wide discretion to settle what is relevant for themselves. Other branches of the accountancy profession, both in the UK and overseas adopt a different approach, requiring members to complete a stated number of hours each year. In some cases the hours are split between those that can be verified and those which cannot.

61. Mr Neil Imber, Head of Learning and Development at Deloitte, attended one of our meetings and described how the ICAEW’s requirements are implemented in a firm where 10,000 practitioners have to certify compliance. The firm follows the ICAEW’s method of personal development, which is carefully structured. Practitioners must reflect on their needs, act accordingly and assess the outcome of

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their activities. Following the guidance of the ICAEW, Deloitte adopt a flexible approach as to what may count as CPD appropriate to the individual. Reading, home study and in certain circumstances research for clients may be taken into account as well as participation in more formal activities. Each accountant records electronically a short explanation of what he or she has done and how it has enhanced their practice. At Deloitte the declaration made in line with that made to the ICAEW is also returned to the firm and the supporting record is available for inspection and discussion by both.

### **Medicine**

62. The **General Medical Council (GMC)** is the regulator of the medical profession. The duty to keep professional knowledge and skills up to date is embedded in its definition of good medical practice: see “Good Medical Practice” (November 2000). More detailed guidance on CPD is set out in “Continuing Professional Development” (April 2004). CPD is stated there to cover the entire range of a doctor’s work – medical knowledge and skill, relationships with patients, working with colleagues, practice management and other matters. It ties in closely with the annual assessments which are an increasing feature of medical work.

63. However the GMC does not at present prescribe any amount of CPD which must be completed as a condition of remaining on the register. CPD is provided for by the **Royal Medical Colleges and specialist Faculties**. There is some variation in practice between these various bodies, but common themes have been developed under the guidance of the Academy of Royal Colleges, which comprises the Presidents of the Colleges and Faculties and meets regularly. Typically they require their members to complete 250 hours of CPD over a period of 5 years. In some cases compliance with CPD is a condition of continuing recognition. In other cases (for example the Royal College of Physicians) it is not. Compliance is monitored by some but not all of these bodies by taking an annual sample of practitioners’ returns. Samples vary between 5% and 10%. Sanctions also vary, reliance being placed on local NHS Trusts to pick up deficiencies in CPD when

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carrying out their annual appraisal of a practitioner's performance. There is no clear policy as to the steps which might be taken against a doctor who had not performed his or her CPD quota. But this may change because the GMC is currently working on developing a scheme of re-validation; and it is likely that CPD will become one of a number of formal components in the reappraisal of doctors. It will thus be linked into the new scheme.

64. The practice of requiring (on average) an hour a week contrasts with the requirements of legal regulators of an hour (more or less) a month. There are however significant differences between the working environment and methods of doctors and, if not of all lawyers, certainly barristers, which have to be borne in mind.

65. Doctors, whether in general practice or in hospitals, tend to work in teams. In hospitals the pattern is hierarchical. There is continual discussion and audit of cases within the team or practice. Some at least of the Royal Colleges (for example the Royal College of Pathologists) accept multi-disciplinary working as a valid CPD activity, provided that the practitioner makes a reflective note of the value of the activity undertaken. Reading and research, including on-line learning, whether in connection with case work or for general enlightenment, also count. The annual tally of 50 hours is not necessarily scored by attendance at conferences or other events, or by publishing books or articles. The weekly target of one hour may not therefore be as difficult to achieve as it might be for lawyers.

### **Dentistry**

66. The General Dental Council (GDC) imposes CPD requirements on dentists, as a condition of their continuing registration, in simple straightforward terms. As with doctors, dentists must complete, and keep records of, at least 250 hours of CPD over a 5-year period. A minimum of 75 of these hours must be "verifiable" CPD. To count as verifiable CPD an activity must have:

## VII: COMPARISON WITH OTHER PROFESSIONS

- “1. concise educational aims and objectives;
2. clear anticipated outcomes; and
3. quality control (i.e. you should be given the opportunity to give feedback).”

Additionally, dentists must obtain and keep a certificate or other type of documentary record proving their participation in the activity. The certificate must come from the activity provider or organiser, and should show the number of hours spent on the activity.

67. Any activity falling within the simple definition above will count. Examples are given in a non-exhaustive list –

- Courses and lectures.
- Vocational Training or General Professional Training study days.
- Educational elements or professional and specialist society meetings.
- Peer review and clinical audit.
- Distance learning.
- Multimedia learning.
- Staff training.
- Background research.
- Private study.
- Journal reading.
- Attending conferences.

A number of these activities – peer review and audit, staff training, background research and private study and reading – would fall outside the range of activities approved for barristers by the BSB.

68. At the end of every year in each 5-year cycle the GDC asks practitioners to fill in a form with a declaration of the CPD hours, both verifiable and non-verifiable, that have been completed. Supporting evidence must be retained by the practitioner. It must be submitted to the GDC only when requested. The GDC, like



## VII: COMPARISON WITH OTHER PROFESSIONS

the GMC, is moving towards a system of re-validation of dentists by a process of external review. Compliance with CPD will form part of that process.

### **Discussion**

69. Our survey throws up some interesting points of comparison. Legal regulators count CPD strictly in hours. The quotas range from 10 to 20 a year. The ICAEW expects accountants to engage in sufficient CPD activities to maintain their fitness to practise, but does not require any particular number of hours. Doctors and dentists, over a 5-year period, are expected to engage (on average) in one hour of CPD activity a week. The Law Society of Scotland, the Medical Royal Colleges and Faculties and the GDC recognise that there is value in reading and other types of private study and are prepared to trust practitioners to count that activity as part of their overall professional programme. The ICAEW takes a similar view. The Law Society of Scotland, some other branches of the accountancy profession, and the GDC require their practitioners to complete a number of “verifiable” CPD hours, i.e. hours for which documentary evidence is available and kept. None of the non-legal bodies makes a distinction between “accredited” and “non-accredited” activities. They are willing to leave practitioners to themselves to decide what type of activity is most relevant and helpful for them.

70. Another important difference is the recognition by the medical, dental and accountancy bodies of activities in the workplace as contributing to professional development. At the Bar, as we have seen, casework for clients cannot under any circumstances be brought into account. Finally, there appears to be some relationship – not entirely consistent – between size of profession (Scots advocates and lawyers in Singapore) and level of enforcement. Smaller numbers facilitate closer scrutiny, especially when returns are made online.

## VIII: PURPOSE AND EFFECTIVENESS OF CPD

### VIII

#### PURPOSE AND EFFECTIVENESS OF CPD

##### **Purpose of CPD generally**

71. All professions agree over the general purpose of CPD and, as we have seen, there is no great difference in the various definitions which they have adopted.

We identify the following purposes:

- To develop and improve practitioners' knowledge of the subject-matter of their practice and the skills they must exercise in order to provide the best quality of service to their client or patient.
- To keep them up to date with new knowledge and techniques relevant to their field of practice.
- To give the public in general and clients and patients in particular confidence that practitioners are skilled in the area of practice in which their services are required.
- To create by participating in CPD events a collegiate ethos which will contribute to the advancement of knowledge, skill and good practice within the profession as a whole.

In paragraph 117 below we show how this is specifically carried over for the Bar.

72. On the other hand CPD is not to be confused with quality assurance. Reviews of professional performance take place outside the framework of CPD although, as we have pointed out, in the medical and dental professions evidence of participation in CPD may be regarded as one of a number of indicators of continuing fitness to practise.

## VIII: PURPOSE AND EFFECTIVENESS OF CPD

### **Effectiveness**

73. This report would be better informed if it were possible objectively and scientifically to measure how effectively CPD achieves those stated purposes. An objective test would enable us to address questions such as these.

- Do barristers perform better, as a result of CPD activities, than they would if they undertook no such activities?
- Do barristers who comply with the requirements perform better than those who do not?
- Do barristers get better over time as they accumulate more CPD points? Or would they improve over time anyway, simply as a result of practical experience?
- On a more general level, can it be proved that the standard of service delivered by the Bar since 2005 is higher than that provided previously? If yes, how much of that improvement is attributable to the introduction of CPD?

74. Selecting the “right” CPD programme, for an individual, might also be significant. The time spent on acquiring 4 points for writing an article or book might or might not have been better spent acquiring the same points in advocacy training. Who can say?

75. Simply to formulate these questions shows how impossible or nearly-impossible they are to answer in any objective way. The variability and unpredictability of cases, differences in personal style and approach, the inaccessibility (on grounds of legal privilege) of the instructions underlying all barristers’ work and the variable quality of those instructions create formidable obstacles. Despite the difficulties the evidence of practitioners themselves, which we record in this chapter, convinces us that a properly constructed scheme of CPD can be of considerable benefit to any profession and the public.

## VIII: PURPOSE AND EFFECTIVENESS OF CPD

76. Barristers attending accredited events in May and November 2010 (see Table 3 in Chapter IV, para. 27 above) completed a questionnaire for us, giving their assessments of the events which they had attended and their views more generally on CPD. A strong vote of confidence in CPD was recorded, which was consistent with the general conclusions reached by Jonathan Hirst QC in his Final Report to the Bar Council (November 2008). The majority considered that the current system is fit for purpose, that a minimum of 12 hours is appropriate and that it is easy to satisfy (see Annex 7). Most found it easy also to find relevant accredited courses. But only a small majority thought that the current system is sufficiently flexible. Attendance at or giving lectures and seminars were the preferred method for satisfying the requirements, followed at some distance by on-line training and writing. This “fit for purpose” verdict is the best evidence we have that barristers consider CPD to be effective.

77. Our surveys also gave barristers the opportunity to say in their own words what they thought of the system. There were strong criticisms which we record in Chapter IX below. More positive points included the following.

- CPD encourages collegiality and allows practitioners to network with others in the same field.
- The current system would be suitably flexible if accredited courses covered a wider selection of practice areas.
- In-house courses for employed barristers are of high quality.
- The very large number of providers of CPD keeps costs proportionate. This sometimes allows for innovative and excellent CPD.
- CPD can be a good career motivator.
- The current requirements are not at all onerous compared with those of some other professions including medicine.

78. An important, more searching and in many respects ground-breaking report on the effectiveness of CPD – in the medical profession – was commissioned jointly by the Academy of Medical Royal Colleges and the GMC: “The Effectiveness of

## VIII: PURPOSE AND EFFECTIVENESS OF CPD

Continuing Professional Development” (Schostak and Others (2010)). This report offers many insights which in our opinion are helpful for the Bar.

79. The report emphasises that there is little published research on the topic. Doctors were therefore directly interrogated by a questionnaire and in interview, and they were shadowed in the workplace. Practitioners stressed the importance of the linkage between subject-matter of CPD activities and their direct work with patients – an emphasis on “active learning” rather than “passive study”. The questionnaire showed high scores for the effectiveness of conference attendance, e-learning and events organised by local hospitals and professional bodies. Reading and teaching nevertheless ranked more highly.

80. Answers in interviews uncovered – as in our own surveys – a wide range of attitudes and experiences, the majority being positive. Learning in the workplace rated as most effective of all, although it was difficult to assess (page 56). The issue of workplace learning was taken up in more detail on page 42 of the report –

*“Learning in the workplace is complex and doesn’t lend itself to an accountability system of overt markers such as attendance at conferences, or reading a minimum number of books. It is hard to describe and thus does not sit well with quantitative approaches. Many interviewees and questionnaire respondents expressed a desire to get away from the “tick-box” approach, to go beyond the notion of “scoring points” and escape gross generalisations; they wanted to get away from a “reductionist” approach towards something that can reflect “the complexity of practice”. There was a perceived danger that the tick-box method evoked a feeling of “being regulated” and that this in turn fostered an autopilot response to acclaim the “credit rating” rather than a reflective learning experience that led to a deeper and more enriched understanding of practice. ... The difficulty arises with the question of how these attitudes, values and qualities can be assessed and recorded: CPD points being related to “quality” and not to “time” and/or “duration”.”*

The report ends by stressing the need to provide diversity and flexibility in CPD attuned to the different needs of individual practitioners.

## VIII: PURPOSE AND EFFECTIVENESS OF CPD

### **Some conclusions**

81. The majority of barristers support the principle of CPD for established practitioners. The most effective activities are considered to be well-organised lectures and seminars, teaching and e-learning. These are also favoured by the medical profession. The professional collegiality engendered by organised events has been commented on in our surveys and in other reports on CPD for doctors. We do not have the opinions of barristers on the value of workplace learning or reading professional materials (which are the most favoured by doctors) because neither is a permitted CPD activity at the Bar.

82. Above all it seems that CPD must be capable of being tailored to what the individual practitioner perceives to meet his or her needs. This implies that the range of activities permitted and available must be as flexible as possible. Flexibility, supported by a requirement that practitioners should reflect more closely on their choice of activity, and record more carefully its benefits, will improve the quality and relevance of the CPD activities undertaken.

## IX: CRITICISMS OF THE PRESENT SYSTEM

### IX

#### CRITICISMS OF THE PRESENT SYSTEM

83. Against the expressions of support for the Bar's present system, which we have recorded in the previous chapter, we must balance a number of criticisms. Some of these were predicted with great foresight by ACLEC in 1997. Criticism is mainly focused on the 12-hour requirement for established practitioners. The EPP accordingly forms the subject-matter of the next five chapters of this Report.

84. The view still persists among a small minority of barristers that CPD is unnecessary for established practitioners. It is argued that daily work for clients in court and in chambers or the office is sufficient to keep barristers fully up-to-date in the knowledge of the law relevant to their practice, and in the development of the skills they have to exercise. CPD, in their view, is a waste of time.

85. By contrast 12 hours a year – one hour a month – is said by others to be far too small a number. Unfavourable comparisons are drawn with other professions, especially medicine. These comparisons may not however take into account the much wider range of activities which count for CPD in other professions.

86. More detailed criticisms include these.

- The 12-hour requirement is purely formal. Practitioners attend events to enable them to fill in their form without regard to the value of what is delivered. The way in which hours are reckoned is irrational and leads to absurd results.
- CPD should be measured by its quality rather than quantity.
- There is no qualitative assessment even of accredited courses. The distinction between accredited and non-accredited activities is illogical and should be scrapped.

## IX: CRITICISMS OF THE PRESENT SYSTEM

- The list of qualifying activities (Table 1) is excessively knowledge-based. The development of some important skills is excluded without any sensible explanation.
- Some of the most effective ways of developing relevant knowledge and skills, e.g. actual practice, reading legal or other materials, sitting as a judge or arbitrator, or supervising a pupil, do not count.
- Outside the circle of Inns, Circuits and SBAs courses are of variable quality and are expensive. Barristers practising outside London are at a particular disadvantage.

87. The administration of the scheme is also criticised.

- The fees for accreditation of providers and events are excessive and unfair.
- The system for monitoring and recording compliance is bureaucratic, expensive and ineffective.
- The procedures for enforcement are cumbersome and irrational.
- Compliance with CPD, if it is to be properly respected and enforced, should be linked to the entitlement to a practising certificate.

88. A further and more general criticism is that the system seems to be based upon suspicion and mistrust of the profession. In the over-zealous pursuit of a small number of potential defaulters, the integrity and good faith of most barristers are not respected. These criticisms have to be carefully evaluated.



**X**

**A MORE FLEXIBLE CPD**

89. Our review of the Bar's present system of CPD, and the comparisons we have been able to make with other professions, convince us that there is no perfect system which can meet all the criticisms. Rules may be focused with greater or less accuracy on the overall aims of CPD. They may provide for monitoring and enforcing compliance with greater or less efficiency. There is a discernible tension between the need to recognise the value of the full menu of genuinely educational activities and the need to ensure that practitioners comply with requirements. A system of enforcement which is "honour-based" will allow greater freedom of choice than one which strives to be "evidence-based". It appears that the more tightly the rules for enforcement are drawn the more they will produce arbitrary results, show jagged edges and create indistinct boundaries as between different types of activity.

90. We have taken a fresh look. In paragraph 71 of this Report we identified four purposes which CPD is intended to achieve: the development and improvement of professional knowledge and skills; keeping up-to-date; maintaining the clients' and public confidence; and creating a collegiate ethos which contributes to the general dissemination of knowledge, skill and good practice. For the better achievement of these purposes at the Bar we are recommending a five-fold strategy which:

- increases the range of approved CPD activities;
- correspondingly increases the number of CPD hours which established practitioners must undertake each year;
- raises the standard of record-keeping;
- simplifies the system of reporting; and
- simplifies enforcement of the CPD Regulations.

91. In this chapter we consider the question of what activities should or should not be allowable as CPD and conclude with a suggested new definition. In the chapters which follow we discuss the other four topics.

92. It can be convincingly argued that any activity on the part of an individual practitioner which serves the purposes which we have identified should qualify for CPD. We agree. Of course the activity must also satisfy the test of relevance: it must be relevant to the individual's present or proposed area of practice. On this approach the choice and mix of activities is left entirely to the practitioner, who is best placed to know what extra training and education he or she needs. This is the position taken by the General Dental Council and the Law Society of Scotland (see Chapter VII above). Any activity satisfying stated criteria will count. There is no list of prescribed, accredited or excluded activities. The GDC helpfully sets out examples of activities which would qualify for CPD in a non-exhaustive list; but dentists are trusted to make their own professional judgements within that framework.

93. It is also common ground that CPD requirements must be supported by a visible and practical system of audit. But it has to be accepted that, however skilfully the rules might be drafted, there will always be some malpractice at the margin, even within the most rigorous "evidence-based" system. It would therefore be a mistake, in our view, to allow a pre-occupation with trying to prevent what might be called "CPD fraud" to control decisions as to what practitioners should or should not do to raise their professional standards.

94. The list of activities currently approved by the Bar (see Table 1) does seem to us to be over-influenced by a need to police the profession and identify and pursue defaulters. Thus what have come to be recognised as the most fruitful CPD activities – private study, and learning in the workplace for example – are excluded, apparently because of a concern that they are unverifiable and also (perhaps) because it was felt that barristers should not be given an easy opt-out from their

CPD obligations. They have to take their medicine. It is however clear that the system we have at present is not foolproof; and we doubt whether, whatever resources it had at its disposal, the BSB could ever make it so.

95. We believe that the Bar should follow the solicitors, accountancy, medical and dental professions, place more trust in the integrity of practitioners, and allow barristers greater scope in selecting the CPD programme which is right to them. We recommend that the present system at the Bar should be improved by accepting as legitimate a wider range of activities which, on the basis of evidence, and on the basis of the professional experience of this working group, are known to make an effective contribution to continuing professional development. We also recommend the removal of some of the formal restrictions which are placed on the accrual of CPD hours. But, against the enlargement of the list of approved activities, we balance other changes which we are also recommending: an increase in the number of CPD hours, better systems of record-keeping, and a more rational scheme of audit and enforcement. Our suggested reforms are put forward as a composite package, each linked to the others.

#### **Private study**

96. Many professions recognise the value of private study. In the survey commissioned by the Academy of Medical Royal Colleges and the GMC it was ranked by doctors as one of the most effective methods of keeping up to date. That would, we think, be obvious to most people. The position in the legal profession cannot be different. The Law Society of Scotland has recognised this basic truth for many years. Law reports reach the internet every day. It is almost inexcusable for a barrister to be unaware of a recent decision, at least in the higher courts, on a point which he or she is arguing in court or is advising upon. Yet the BSB does not give credit for this essential activity.

97. Likewise no credit is given for reading legal journals and other similar materials, such as the printed text of a lecture which a practitioner might not have

been able to attend. While we cannot quarrel with the present ban on “subscriptions to legal journals”, the exclusion of actually reading them is hard to justify. Private study should, subject to what we say about record-keeping, be added to the approved list.

**Professional work**

98. The other activity which achieved a top score in the medical survey was learning in the workplace. This is more difficult to accommodate at the Bar, especially at the self-employed Bar. The environment in which doctors work is different to that of barristers. We have referred to the fact that they work in teams, discuss their cases among themselves, and are subject to continual peer review and audit.

99. The interaction of teaching and learning embodied in this style of working has no obvious counterpart among barristers. The question whether there are any other categories of professional work at the Bar which should qualify for CPD has been debated by this working group. There are two candidates which we have closely considered.

100. For more senior practitioners, sitting in any judicial capacity or as an arbitrator, or acting as a mediator, enriches an understanding of the law, procedure, the skills and pitfalls of advocacy, and the problems which face litigants. It is demanding work.

101. Secondly, we have noted that preparing and delivering lectures and talks to professionals and university students – rightly – attract CPD hours; but acting as a pupil supervisor is not placed on the same footing. It is tempting to argue that it should be. There are however differences. The value to the supervisor of pupil supervision in terms of his or her professional development – however important and valuable it may be in other respects – is variable, and may be negligible. It is very difficult to measure. Similarly, in the light of the current practice of allocating

pupils to more than one supervisor during pupillage, it is difficult to judge how much or little supervision should count.

102. We have concluded that neither of these should attract CPD hours in themselves, but would confirm and extend the present practice of recognising the value of formal training in these activities. We note that until January 2011 judicial and tribunal shadowing schemes organised by the Ministry of Justice and the Employment Lawyers' Association were approved for CPD, but have been removed from the approved list. They should in our view be reinstated in a more general "judicial training" list which would include: training to sit in any judicial capacity, or as a tribunal chairman or member, arbitrator or mediator; attending an organised scheme shadowing anyone exercising any of those functions, or any other formal organised work-shadowing scheme; and acting as a judge's marshal. We also support the current inclusion of training as a pupil supervisor.

### **Personal skills**

103. One of the criticisms made of the present system is that it is excessively knowledge-based and does not sufficiently acknowledge that successful practice as a barrister requires the exercise of a variety of personal skills in addition to knowledge of the law. Advocacy is the most important skill, and advocacy training is properly recognised. Other skills are sometimes described as "soft skills". That suggests that they might not be as important, and we will not use that description.

104. Attending a personal- or time-management course may at present attract up to 4 CPD hours, but for some reason courses on stress management, presentational skills or practice management more generally do not count. Nor, incredibly, does voice coaching. All of these activities are in our opinion capable of improving the quality of the service which a barrister delivers to his or her client and should in our view be allowable. We recommend that attendance at courses delivering any of these various skills should be combined in a generic category of "Practice Management and Personal Skills".

**Compulsory topics**

105. It has been suggested to us that certain activities should be made compulsory CPD activities for all barristers. The Equality and Diversity Committee of the Bar Council has argued strongly that, perhaps not on an annual basis, equality and diversity training should be made compulsory for all. The argument has two limbs. All barristers have to deal with clients from all backgrounds and with diverse attributes, including their ethnicity and any disability. It is of overriding importance that barristers should have a full understanding of the different needs, cultures and concerns of all clients. Secondly within the management of chambers or offices where barristers work a full understanding of equality and diversity issues is necessary as part of the process of recruitment, training and internal career management.

106. These are very powerful arguments. They are supported in paragraphs 329-331 and Recommendation 44 of the Final Report of the Bar Council's Working Party on Entry to the Bar (Neuberger (2007)). We would however point out that, without compulsion, the Bar has – thanks in considerable measure to the activities of the Equality and Diversity Committee itself – made significant strides. Chapter 3 of the Pupillage Report demonstrates a diversity among present day pupils which places the Bar well in the forefront of progress. Equality and diversity training is also a compulsory element for pupils in their practice management course and in the training of pupil supervisors. The Pupillage Report also recommends that at the very least the chairman of a pupil selection committee, if not the entire membership, should receive equality and diversity training. This recommendation is being actively pursued, and could be enlarged to cover membership of all recruitment committees. The BSB has proposed that the new Practising Rules will require that chairs and subsequently all members of interview panels be trained in fair recruitment.

107. It would in our opinion be a step too far to make equality and diversity training compulsory for all as part of CPD. As an annual event it would be regarded

as oppressive and it would be resented. Periodic training would be more difficult to organise. It too would, in our view, be resented. Equality and diversity training, when it is undertaken, should of course be acknowledged as a legitimate CPD activity. Because of the contribution it makes to the effective management and development of chambers or the office where barristers work we would also unhesitatingly include training in fair recruitment procedures, and the management of barristers' careers (in chambers or at the Employed Bar), as an approved activity. But this working group would go no further than that.

108. On the grounds of more general policy advocated in the Neuberger Report, the BSB might nevertheless conclude that equality and diversity training should be compulsory for all practising members of the Bar, annually or on some other periodic basis. That is a question which we will leave in the BSB's hands. If it were to take that view, it would no doubt agree that it should attract CPD hours.

109. We do not believe that any other subjects should be made compulsory. Lord Justice Jackson, in Chapters 36 and 37 of his Review of Civil Litigation Costs: Final Report (The Stationery Office, 2010), refers to the desirability of training for barristers who have to deal with issues of costs in civil cases. In Chapter 36, which addresses Alternative Dispute Resolution, he argues strongly (see paras. 3.8 & 3.9) for the development of a professional textbook and formal CPD training in that subject. In Chapter 37, which is concerned with e-disclosure, he refers in terms to the review being carried out by this working group, and suggests that –

*“... e-disclosure should be a substantial part of CPD which is offered to barristers who will have to deal with e-disclosure in practice.”*

110. Lord Justice Jackson also recognises that not all barristers are concerned with questions of civil costs, although it is fair to say that an increasing number will be concerned with e-disclosure; and we do not understand him to recommend that the training which he has in mind should be compulsory for anyone. He makes it abundantly clear that it is highly desirable. His recommendations are obviously a fit

subject for SBAs, among others, to consider when they are planning their CPD programmes. We recommend that these parts of his Report are taken up by them.

111. The Advocacy Training Council, in its consultation with us, specifically rejected the suggestion that CPD (after the NPP) should contain a compulsory element of advocacy training. Our conclusion is that any type of compulsory training would detract from the flexibility which we are aiming to achieve.

#### **Exhaustive or non-exhaustive list**

112. We conclude that the categories of approved activities should be enlarged. Any activity undertaken by an individual must be relevant to his or her present or proposed area of practice. It must also have a legal subject-matter or otherwise contribute to the development of the knowledge or skill required by the individual in the conduct of that practice. Subject also to questions of the number, distribution and allocation of CPD hours, and the question of verification, we would expand the list of approved activities as follows.

TABLE 6: ACTIVITIES WHICH SHOULD COUNT

<b>Activity</b>	<b>Examples</b>
<b>Participation in courses etc.</b>	Attending a professional course, lecture, seminar, conference or similar event.
	Attending a university course.
	Participating in an online course.
<b>Judicial etc. training, and work shadowing</b>	Training as a judge, recorder, tribunal member or chairman, arbitrator or mediator.
	Attending an organised scheme shadowing anyone exercising the above functions, or a senior lawyer.
	Acting as a judge's marshal.
	Acting as a Judicial Assistant.
<b>Development of personal and practical skills</b>	Attending an advocacy training course.
	Attending a course for the development of any other relevant personal and practice management skills.
	Equality and diversity training.



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<b>Teaching</b>	Preparing and delivering a lecture or training session on any of the above.
	Teaching on a pupils' or new practitioners' course at an Inn, on Circuit or for a Specialist Bar Association.
	Teaching on a university law course.
	Acting as a member of a court or tribunal at a moot, mock trial or similar event.
	Undertaking training as a pupil supervisor.
<b>Legal writing</b>	Publishing a book or article.
<b>Private study</b>	Reading by way of private study law reports, statutes, legal journals or similar materials otherwise than for the purpose of publication or providing legal services to a particular client.  Viewing or listening to relevant broadcasts having a professional legal content.

113. This leads to the question whether, as at present, the BSB should state that these and only these activities will attract CPD hours, or whether it should follow the example of the GDC and others, treat the above list as illustrative, and permit any other educational activity to count, if it is relevant to the practice of the individual, and achieves the objectives of CPD.

114. While we believe that the expanded list shown in Table 6 above will capture most of the activities which barristers will wish to present as CPD we also accept that it is not possible to anticipate all the activities which can in good faith be genuinely presented as serving the same professional purposes. This view is supported by the experience of the BSB's CPD Sub-Committee and its officers. Consistently therefore with our advocacy of giving autonomy to barristers to make their own choices, we propose that any activity satisfying the criteria we have

discussed above and define at the end of this chapter, and subject to the conditions which we discuss in the next chapters, will count for CPD purposes. Table 6 may be taken as a non-exhaustive guide. It should not exclude other possibilities.

### **Exclusions**

115. If our recommendations are accepted, practical experience shows that the CPD Sub-Committee and the BSB's officers will receive numerous inquiries from practitioners on the acceptability of activities not shown in the illustrative list. We therefore think that we should also give some non-exhaustive guidance in advance as to what activities ought not to count. Our list of exclusions is set out in Table 7 below.

**TABLE 7: ACTIVITIES WHICH SHOULD NOT COUNT**

<b>Activity</b>	<b>Examples</b>
<b>Supervising pupils</b>	
<b>Sitting in any judicial capacity</b>	
<b>Sitting as a chairman or member of a tribunal, or as an arbitrator</b>	
<b>Acting as a mediator</b>	
<b>Teaching students below the level of an undergraduate degree</b>	
<b>Unofficial networking activities</b>	Running a personal website, blog, legal commentary or online diary.
<b>Participating in personal development events or similar activities</b>	Such as learning interview or CV writing techniques.
<b>Giving career talks</b>	
<b>Participating in marketing events</b>	Including social and networking events, as well as events directed at enhancing or developing sources or quantities of work.

<b>General networking</b>	By attendance or speaking at dinners and other social occasions, book launches, tours, receptions, court visits or general meetings.

### **Balance**

116. Finally we endorse the philosophy which apparently underlies the present system, namely that practitioners should strike a reasonable balance between different types of CPD. This is currently achieved by rules which impose arbitrary limits on the number of hours which can be allocated to any particular activity. The requirement of balance is, in principle, useful. The way in which it might be met in the future is discussed in the next chapter.

### **Conclusion**

117. We conclude by offering a revised definition of CPD, recapitulating the summary of its purposes as we have set them out in paragraph 71 above.

*“CPD is any activity undertaken by a barrister which is relevant to the barrister’s areas or proposed areas of practice but is not part of the barrister’s normal professional commitments which will –*

- *develop or improve the barrister’s knowledge of the subject-matter of his or her practice or proposed practice and develop to a high standard the skills required to conduct that practice*
- *keep the barrister up to date with new knowledge and skills relevant to that practice*
- *give clients and the public confidence that the barrister is skilled in the areas of practice in which his or her services are required*
- *create by participation in organised CPD events a collegiate ethos at the Bar which will contribute to the advancement of knowledge, skill and good practice within the profession.”*

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We propose that this definition should be supplemented by a Table in the form of Table 6 above illustrating by way of example the type of activity which will fall within this definition, and a Table in the form of Table 7 stating examples of activity which the BSB considers should not qualify.

**XI**

**HOW MUCH CPD?**

**Number of hours**

118. When compulsory CPD was introduced for established practitioners, a minimum of 12 hours CPD activity a year, averaging one hour a month, was considered appropriate. The requirement for CPD was then completely novel. The proposal to introduce it for established practitioners at all, as we have seen from the Bar Council's response to the ACLEC consultation, had been rejected in principle by the leaders of the profession. Moreover, the 12-hour quota was linked to what we have come to regard as an unnecessarily restricted list of approved activities. At the time when it was introduced the figure was carefully judged. Our surveys show that the profession as a whole has now comfortably digested it. Many barristers, under present arrangements, register more than the minimum amount.

119. We do not think that 12 hours are now enough; and we suspect that the public will not think 12 hours are enough. The introduction of a more flexible and amenable list of approved activities, selected because of their established value for CPD purposes, gives barristers more room to manoeuvre and good reason to take CPD more seriously. An advance from 12 hours to 24 is now in our view appropriate. We recommend that increase.

**Counting the hours**

120. The notes to the form attached to the CPD Guide in which practitioners have to record their hours states that hours spent in seminars or lectures must be rounded down to the nearest half hour. There may be a reason why this rule applies only to seminars and lectures. It has been criticised by the Bar Council's Professional Practice Committee in correspondence with us on the ground that it can produce, in extreme cases, some absurd mathematical results. We do not go

into the fine detail of that argument. We do however recommend that practitioners should be left to themselves to record as accurately as they can the actual time spent on any CPD activity.

### **Maximum number for any single activity**

121. Rules which limit the number of hours which can be counted for certain activities are a bone of contention, especially among authors of textbooks and articles. Why should the author of a legal article be entitled to claim the same number of hours as the author of a book? And why is 4 hours (in the year of publication only) thought to be a fair allocation for writing either?

122. The answer to these questions has been suggested in paragraph 116 above. Limits have been set to stop, for example, authors of books from allocating their entire annual quota to writing, and to encourage them to engage in a mixed portfolio of activities, including collegiate events. There is a parallel in the rule now discarded by the Law Society of Scotland that 15 of its required 20 hours should be spent in group activities.

123. In our view a more open and honest way of achieving balance is by expressly requiring barristers to achieve just that, and to demonstrate in their annual CPD record that they have done so. It is not necessary therefore to stipulate that an author is limited to 4 CPD hours for writing a book or article which manifestly took much longer. The number of hours can be fairly and accurately stated in respect of each year in which the work is done. We place it on the same footing as private study. But it will not normally be sufficient to allocate the whole of one year's quota to any single activity or event. A reasonable balance must in our view be struck between different types of activity or a range of events, and explained and justified in the individual's record form. We return to this theme again in the next chapter when we discuss the issue of verification.

### **Preparing lectures**

124. After careful discussion we would make an exception in the case of lectures. Under the current rules barristers can claim an amount of time for the preparation of a lecture which is equal to the time for delivering it. That does not seem to us to accord with reality. We would retain a cap, but increase the allowance to twice the time for delivery or the actual time taken for preparation, whichever is the less.

**Repeat activities**

125. The ban on claiming hours for undertaking the same activity, such as delivering a lecture, more than once in the same year is in our view reasonable, and should be retained. More controversial are activities undertaken back-to-back, such as participating in an online course at the end of one year and repeating it immediately at the beginning of the next. We do not however think that is necessary to legislate about this type of case. If a practitioner is willing to spend time and presumably money repeating an exercise, and judges it to be worthwhile, we do not think that the regulator should rule it out, although its intrinsic value may (as we shall show) be taken up with the individual at a later stage.

**Extensions of time**

126. Barristers who anticipate that they will not be able to complete the required number of hours in a year or who, after expiry of the year, have a shortfall, may apply to the BSB for an extension of time. As we have recorded in paragraph 34 above, the numbers are not insignificant. Applications are handled by the BSB's Qualifications Committee which will consider applications for an extension of time on submission of an application accompanied by an application fee of £135. Hours completed to make up a shortfall in a previous year cannot be counted twice. Other professions approach this problem in different ways. The medical and dental professions work on a five-yearly cycle, allowing for hours to aggregate over a longer period. At the Irish Bar extra hours undertaken in the last two months of one year can be credited to the following year. A "carry-back/carry-forward" system previously allowed by the Law Society of Scotland has been abolished. In Singapore

balancing one year against another is acceptable without the necessity of making a formal application.

127. The system operated by the BSB is in our opinion satisfactory. It emphasises the importance of completing a quota of professional development each 12 calendar months. Where there is likely to be or has been a shortfall the remedial action available under this scheme is simple and straightforward. In the light of our recommendations in Chapter XIII about the linkage between CPD and the practising certificate, the system should be retained.

### **Waivers**

128. The issue of waivers is different. Under present arrangements a practitioner who anticipates taking time out from practice, for example for maternity or paternity leave or for a sabbatical break, or who is overtaken by unexpected events such as illness, accident or bereavement, may suspend his or her practising certificate. He or she will then be exempt from the CPD Regulations because the Regulations only apply to a barrister “*who holds a practising certificate*”: see regulations 1-5. Barristers who wish to retain their practising certificate in any of these situations may apply to the BSB for a waiver of the whole or part of the requirements. Again, these applications are handled by the Qualifications Committee.

129. We do not think that waivers should normally be granted in these circumstances. Nor do we consider that suspension of a practising certificate should normally excuse a barrister from catching up with CPD when he or she wishes to come back to work.

130. We can sympathise with an argument that to grant a waiver to, say, a barrister who has a new-born child or other family commitments, or to someone who has become ill or disabled, will advance the cause of diversity and inclusivity at the Bar. But the argument loses sight of the purpose of CPD, which is to improve the quality of service which the barrister delivers to the client. The client’s interests are



paramount. There is in fact a case for saying that someone who has been out of practice for a while should do more rather than less CPD. We do not go that far; but we do not think that absence from practice, for any reason, is a ground for a waiver. The power to grant extensions of time on appropriate terms, or to re-issue a practising certificate subject to conditions about CPD, should cover these cases. The Qualifications Committee should have a discretion to decide whether a returning practitioner should make up the whole of the shortfall, or some part of it, and over what period, taking into account any amount of CPD which has been undertaken during the period of absence from practice.

131. A quite different case for waiver has been put to us by a senior practitioner who is an internationally acknowledged expert in a branch of law of which he can claim to be one of the creators. He has suggested to us that barristers who reach a certain age or level of seniority (or, we might add, because he has not suggested this himself, eminence) should be exempted from the CPD requirements because they add nothing to the quality of their legal work.

132. We have carefully discussed this case. Age in our opinion cannot be a ground for exemption. The Bar accommodates practitioners across a very wide age range. We cannot see any reason for mitigating the CPD requirements for older practitioners, most of whom do not share the distinction of our correspondent. Eminence in a field is a different matter. Here we draw attention to the wide range of CPD activities which (if our recommendations are accepted) can be undertaken in the future. We would not expect eminent practitioners to sit in at a seminar or lecture which they could deliver much more effectively themselves. But giving lectures and legal writing are some of the ways in which our senior colleagues can both accumulate hours and enrich the knowledge and skills of other lawyers. Private study, which we have recommended as a legitimate CPD activity, will be part of the way of life of barristers in this category. In our view there will, if our recommendations are accepted, be a sufficient range of CPD activities available to

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even the most experienced and distinguished members of the Bar to justify the BSB's maintaining its requirements in these exceptional cases.

## XII: ACCREDITATION AND VERIFICATION

### XII

#### ACCREDITATION AND VERIFICATION

##### **Accreditation**

133. It is our opinion that the distinction between “accredited” and “unaccredited” activities has outlived its usefulness, and should be abolished. The reason for the distinction we believe to be as follows. It is said that, within the framework of a requirement of a minimum number of hours, there should be a core of activities which are singled out because of the status and quality of the provider, and the guarantee which the provider can therefore give of the quality of what it is putting on. Thus, CPD activities provided by the Inns, Circuits, SBAs, chambers, government departments, universities and other public bodies will be automatically admitted to this inner circle of especially valued providers. As we have noted, individuals attending these events will still have to demonstrate that they pass the test of relevance to their practice; but on that understanding, the argument runs, all barristers must for some part of their CPD activities be exposed to events marked out in this way. A similar approach to accredited events is adopted, in outline, by the SRA and the Irish and Scots Bars, and in Singapore.

134. However, the system operated by the BSB has got out of hand. Any potential provider of professional training can apply for accreditation. Over 1000 have successfully done so, and no fewer than 6000 accredited events take place each year. The staff of the BSB and the BSB’s CPD Sub-Committee receive a large volume of applications for accreditation, both in respect of providers and events. It is impossible for them to exercise any quality control. The most they can do is look at the application and satisfy themselves that the event falls within the list of approved activities: see Table 1. Applicants are rarely turned down. Nor does the BSB have the resources to monitor courses in the manner in which the SRA can, as described in paragraph 47 above. The guarantee of quality which was supposed to attach to

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accredited events cannot be given. Nevertheless many commercial providers are happy to pay the £400 fee for annual accreditation because their events can then be marketed as helping barristers to fulfil the “accredited” part of their annual quota; and the fact of accreditation, in the eyes of some potential customers, will certainly carry an implication of quality assurance, however misleading that may be.

135. On the other side of the line there are other professional organisations, including international groups of lawyers from different jurisdictions, running events of undoubted quality attended by a broad group of professionals, who will not take the trouble to be accredited because the number of barristers attending will not justify the £400 fee. Attendance at these events will collect “unaccredited” hours only. But they are none the worse for that. Accreditation in our view has turned out to be a superfluity, and the requirement of accredited hours can at times be a distraction or a nuisance.

136. The main thrust of this working group’s recommendations, as we have shown, is that there should be as many potential CPD activities as possible, giving barristers full autonomy to decide for themselves what is relevant and useful for them. Barristers are the best judges of the quality of the courses they attend. They should be trusted to decide for themselves whether an offered course, lecture or seminar is something they wish to support. No-one else can make that judgment, and certainly not a committee.

137. In the environment we have described activities organised by the Inns, Circuits, SBAs and the Advocacy Training Council, and similar bodies, will always be strongly supported, accredited or not. Moreover they do not charge high fees for attendance. Our discussions of CPD with members of the employed Bar show that on the whole they are satisfied with their in-house training, attendance at which will often be required under the terms of their employment. In so far as employed barristers have to go outside their organisation for more CPD hours, again we believe that they can be relied upon to select the activities which are best suited to

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their practice, without having to trouble themselves as to whether the event is or is not accredited.

138. If the requirement that a proportion of CPD hours must be accredited is abolished, a significant amount of the work of the BSB's staff who administer CPD, and of the CPD Sub-Committee, will disappear. Abolition will however deprive the BSB of a net contribution to its overall running costs, the value of which we have tried to indicate in Chapter VI above. It must also be pointed out that, even without the accreditation system, the BSB will continue to incur both direct and indirect expenditure in running the business of CPD. However, the fact that the system of accreditation yields a profit to the BSB cannot, in our opinion, be a reason for keeping it going if it cannot be justified on grounds relevant to CPD. We also believe that an "accreditation-free" system will provide the BSB with business opportunities. Following the recommendations of the Final Report of Jonathan Hirst QC in November 2008 the Bar Council has created a website which brings together all the CPD events promoted by the Inns, Circuits and SBAs. We have referred to this valuable service in Chapter IV above. There is no reason why this website cannot be expanded (by the Bar Council or, more appropriately the BSB) to advertise any CPD event which any provider – professional or commercial – wishes to promote, but with a disclaimer about quality assurance. A fee can be charged for each entry, and the differential between commercial and not-for-profit organisations can be preserved. We recommend that this possibility should be explored.

### **Verification and record-keeping**

139. We recommend that a system of "verification" should be substituted for accreditation. In Chapter VII above we summarised the way in which such a system is operated by the General Dental Council. Out of the required number of 250 CPD hours which dentists must record in their quinquennial returns, 75 must be "verified". To satisfy this test the hours claimed must be spent on activities which serve stated CPD purposes, provide "quality control", ie allow for feedback by participants, and

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are documented independently by the provider. The Law Society of Scotland has a similar scheme.

140. We propose that 12 of the 24 hours we are recommending for the Bar should be “verified” by some form of documentary proof. However, we do not think that it is necessary for the BSB to prescribe in detail the type of verification which should be provided. Barristers are by the nature of their profession capable of deciding for themselves what proof they should keep of the CPD they have completed.

141. Third parties organising events can be encouraged (as some already do) to provide a certificate or hand-out at the end to those attending. But there are many other ways in which attendance can be proved. If a barrister is organising an event, or speaking or teaching at it, keeping documentary proof of the event which records his or her participation in it cannot present a problem. Private study will not be capable of verification. The writing of a legal textbook or article can be verified in the year of publication. Time spent on research and writing prior to the year of publication should count as non-verifiable private study.

142. Whether activities fall into the verifiable or non-verifiable category, they should be recorded more conscientiously and efficiently than they are at present. The current form, which is returned to the BSB for checking, contains the barest details of the activity undertaken. We recommend that barristers should complete and retain a more reflective account of their CPD activities (both verifiable and non-verifiable) setting out more explicitly the reason why the activity was undertaken and its relevance to the individual’s practice. Filling in the form will not be an elaborate or time-consuming exercise. Short notes will be enough. But it will encourage practitioners to think more deeply about the value of the activity recorded and aid future planning. In respect of activities which are “verified” the supporting documentation should be filed with the record.

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### **Private study**

143. On the specific question of private study the notes should record the publications read and the dates when they were read, and should give a brief justification for the study undertaken. The same approach should be taken to other non-verifiable activities such as studying non-verifiable audio-visual material.

### **Balance**

144. We have identified as one of the purposes of CPD the promotion of collegiality within the profession. The barristers who responded to our surveys, and medical doctors, lay stress on the effectiveness of collegiate events. It is very likely that most barristers will satisfy the requirement of 12 “verifiable” hours by attending and retaining proof of attendance at this type of event.

### **Record forms and declarations of compliance**

145. A suggested record form is annexed to the draft Handbook. The only document which barristers will be required in the first instance to return to the BSB will be a signed declaration stating that in the relevant year they have complied with their CPD obligations and that they will retain for three years the record (including documentary evidence supporting the verifiable activities) which substantiates the declaration. The draft Handbook also contains a suggested form of declaration.

## XIII: MONITORING, ENFORCEMENT AND SANCTIONS

### XIII

#### MONITORING, ENFORCEMENT AND SANCTIONS

146. The present practice of monitoring compliance and the enforcement of the rules, also call for a number of changes.

##### **Monitoring**

147. Our recommendations about record-keeping and declarations of compliance set out in the previous chapter will have the effect of abolishing the burdensome and expensive task imposed on the BSB of checking some 15,000 returns every year to ensure that each barrister has fulfilled the CPD requirements. That process, as we have pointed out, takes between 2 and 3 months. We do not see how the staff of the BSB can be expected to read this material in any meaningful way. A requirement that each practitioner simply returns a signed declaration stating that, during the relevant period, the prescribed number of hours has been completed follows the example of (among others) the SRA and the Irish Bar. The portfolio, which we have said should be more detailed than the current document, and independent proof of participation in verifiable activities, must be kept by the barrister for a period of 3 years, and may be audited; but it does not until then have to be seen by the BSB's staff.

148. The method of audit which we recommend is that, in each year, there should be a systematic sampling of these records. There are two ways in which this can be done. As part of the BSB's chambers monitoring exercise the members of the chambers should be required to produce their CPD records for inspection and, if necessary, discussion. In addition, a random selection of records should be called for each year. Our recommendation is that 10% should be requested for initial reading, that may identify a number of returns that require further discussion with



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the barrister. Of the remainder, a further 10% could also be taken up in more detailed discussion with practitioners.

149. The initial reading can be carried out by members of the BSB's Compliance section. The responsibility for the more detailed discussion in the second round should be placed upon the barrister. The barrister should be required to discuss his or her record with a senior practitioner who is qualified to assess the validity of the record, for example the head of chambers, a Queen's Counsel in chambers or elsewhere, a Bencher of the barrister's Inn, the Leader of the Circuit or a member of the Circuit's Education Committee, or a member of the committee of the barrister's SBA. The person consulted should sign a declaration stating that he or she is satisfied that the CPD requirements have been complied with in accordance with the form. If such a person cannot be found, or a declaration cannot be provided, the matter should be taken up with the BSB's Professional Conduct Committee.

#### **Enforcement and sanctions**

150. The present system of dealing with cases of CPD default is in our view clumsy and over-elaborate. Paragraph 202 of the current Code of Conduct places immediately next to each other the requirements to complete CPD and to hold a practising certificate. Both are expressed as conditions of the right to practise. But they are entirely free-standing. Failure to complete CPD under the present rules has no effect on the practising certificate. This is surprising. CPD default is enforced under a discrete disciplinary procedure, involving fines, requirements for remediation and (in extreme cases) disbarment, after an elaborate process of warning letters, disposals by consent (in most cases), disciplinary hearings and possible appeals.

151. The more obvious method of enforcement is to establish a linkage between compliance with CPD requirements and the issue or re-issue of a practising certificate. Making compliance with the CPD requirements a condition of the issue of the certificate would have two merits: it would drive home the importance of CPD,

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and it ought to reduce the number of cases which lead to hearings and appeals. We recommend that the Code of Conduct should be amended accordingly.

152. One of the obstacles in making this connection in the past has been that the CPD and the practising year have coincided – the calendar year in each case. Applications for renewal of practising certificates have had to be made before the end of the calendar year, but the CPD return has not been required until 31<sup>st</sup> January following the end of that year. However, the BSB - has recently changed the anniversary of the practising year. This clears the path for reform. Our understanding of the new regime is that applications for a renewal of the practising certificate will have to be made not later than 31<sup>st</sup> March, effective for the next 12 calendar months. Applications will be made online. This should reduce the time required for processing them.

153. Some care will have to be exercised, however, in the way in which the link between CPD and the practising certificate is operated. The following considerations have to be borne in mind.

154. First, a barrister who continues to practise without a practising certificate, and is performing reserved legal activities, will be committing a criminal offence under section 14 of the Legal Services Act 2007. Withholding a practising certificate for non-compliance with CPD would therefore have very serious outcomes not paralleled in any other profession. Secondly, failure to complete CPD in any given year does not mean that a barrister is unfit to practise. To suggest otherwise flies in the face of the long history of the Bar before 2005. CPD is not to be confused with quality assurance. Professions such as medicine and dentistry, which are moving towards a system of re-validation, may in the long run count compliance with CPD as one of a number of indicators of fitness to practise. Non-completion of CPD may at present impair recognition in the case of some (but by no means all) Royal Medical Colleges or Faculties, but, taken by itself, it will not result in a doctor's being struck off the register. Thirdly, the experience of the Professional Conduct

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Committee shows that the circumstances in which barristers fail to comply with CPD vary considerably. In most cases there are extenuating circumstances. We have referred to some of these in paragraph 40 above. Fourthly, the interests of a barrister's clients cannot be put at risk by a peremptory cessation of the right to practise. If a barrister is in the middle of a trial, or has been acting for a client in a long-running matter, litigious or otherwise, the sudden removal of his or her services could be at the least inconvenient and possibly very damaging to the client.

155. There is, as we state, merit in requiring barristers to submit their declaration of compliance with CPD as part of their application for the issue of a practising certificate. However the withholding of a practising certificate on the ground of non-compliance with CPD should, for the reasons which we have just explained, be treated as a sanction of last resort. It should only be imposed in the most serious cases after careful consideration of those cases.

156. We therefore propose a new scheme of enforcement which would work on the following lines.

- (1) A declaration of compliance with the CPD requirements for the preceding calendar year (extended by any previous grant of an extension of time) should accompany and be part of the application for the issue of a new practising certificate, the application being submitted not later than 31<sup>st</sup> March following that calendar year, in anticipation of a new practising certificate commencing on 1<sup>st</sup> April.
- (2) If for any reason the barrister cannot declare that he or she has accumulated the required number of CPD hours for that calendar year (as extended), the barrister must apply for an extension of time to make up the shortfall, and undertake that he or she will comply with any directions for doing so.
- (3) If for any reason no or no sufficient declaration is submitted, and an extension of time is applied for, the BSB will take up the matter with the barrister concerned. In the case of a first offence it should give

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directions for making up any shortfall and issue a warning that repeated defaults will be investigated and may lead to the refusal of a practising certificate in the future.

- (4) Where there is persistent default the Professional Conduct Committee should have a discretion to decide whether the current practising certificate should be discontinued, or continued with conditions attached for remedial action, and to fix the date when any forfeiture of the right to practise might come into effect, having regard to the barrister's existing commitments. The Professional Conduct Committee or its delegate must have a general discretion to deal with each case on its facts. No doubt custom and practice will arise in the exercise of that discretion but we would not presume to lay down any guidelines in advance as to how it should be exercised.

157. Corresponding rules should apply when a barrister who has suspended his or her practising certificate applies for it to be restored.

158. The administrative fee of £135 seems to us, at present, to be appropriate to cover the trouble and cost incurred in dealing with these cases. The amount is consistent with the fee payable for applying for an extension of time in advance.

#### **Support for sole practitioners**

159. In paragraph 40 above we referred to the fact that a disproportionate number of barristers who default on their CPD obligations are sole practitioners, working alone, probably in many cases from home or a small office, without the professional and administrative support provided by colleagues and staff. The BSB will be able to identify sole practitioners from the record they return when renewing their practising certificate; and it should develop a means of communicating with them which supplements the ordinary round-robin reminders which are sent to everyone.

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160. We make the following suggestions. The BSB should start with a questionnaire asking sole practitioners how they tackle their CPD obligations and what support they would like to receive in fulfilling them. Practical measures might then include: a targeted letter and e-mail early in the year describing the different ways in which the CPD requirements can be met; providing a direct link to the Bar Council (or BSB) website which advertises CPD events; the creation of a sole practitioners' network or forum, and possibly a SBA, which will enable them to collaborate with each other in arranging CPD events; and encouraging the Inns, Circuits, SBAs and other providers to advertise their CPD events on any special network or forum which might be created. Other constructive suggestions should follow from this initiative.

## XIV: THE NEW PRACTITIONERS PROGRAMME

### XIV

#### THE NEW PRACTITIONERS PROGRAMME

161. Regulation 4 of the CPD Regulations requires barristers commencing practice on or after 1 October 2001 to complete a minimum of 45 hours of CPD in their first three years of practice. Within that period 3 hours must be spent in training in ethics and 9 in advocacy training. While this might appear to equate to 12 hours a year plus 9 hours compulsory advocacy training, there is nothing to prevent a new practitioner from fulfilling the requirements in a single year - perhaps in the first or at the end of the third - and enjoy two years without having to undertake any CPD at all.

162. The compulsory courses in advocacy and ethics are usually undertaken by attendance at a single programme of training – the NPP compulsory courses. All four Inns and all six Circuits deliver the NPP courses. We have received from all of them details of the programmes they provided in 2010. Members of the working group have attended and observed a number of courses. The general content and organisation of the programmes follows the model of the compulsory courses in advocacy, ethics and practice management which the Inns and Circuits provide for pupils; but the exercises are more advanced and more demanding.

163. Of the four Inns Lincoln's Inn and Inner Temple deliver the NPP courses at a residential weekend outside London, beginning on a Friday, working through a long Saturday and ending on Sunday afternoon. Gray's Inn and Middle Temple use their own premises in London. Middle Temple provides a 2-hour introductory session on a weekday evening and works throughout Saturday, and Sunday on Ethics. Gray's Inn starts with a short introduction on Friday evening and works through the whole of Saturday and Sunday morning.

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164. The Inns split their advocacy exercises between civil and criminal practice. Some have separate advocacy training in family law. Middle Temple has a separate programme for the employed Bar. We presume that these separate programmes are arranged according to demand. Advocacy training follows the Hampel method, with some departures from the strict pattern followed on the less advanced BPTC and pupillage courses. The programmes include case analysis, examination of witnesses, opening and closing speeches, interlocutory applications and (where appropriate) written skeleton arguments. In every case the 9-hour minimum is exceeded.

165. The 3 hours' training in ethics is not expressly referred to in every published programme. It is however clear from the training materials produced that this element is always covered.

166. Five of the Circuits follow a very similar pattern, the programme being delivered over one or two evenings and a weekend, which in most cases is residential. The advocacy programmes are divided between civil and criminal law, and some Circuits also have a programme in family law. Again the 9-hour minimum for advocacy is in most cases exceeded. The Western Circuit devotes a separate evening to training in ethics. The Circuit sent us its list of ethical problems which were carefully designed and extremely challenging.

167. The South-Eastern Circuit has devised a more advanced programme delivered each year at Keble College, Oxford. Entitled the "Advanced Advocacy Course", it is a five-day residential course attended by approximately 70 barristers. Fees vary according to the status and area of interest of the participant, starting at £1,100.

168. While it comprises all the compulsory elements of the NPP, the standard and quantity of training exceeds by some measure the requirements of that programme. The course is also attended by barristers who have previously completed the NPP

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and are seeking more advanced training, for which of course they acquire CPD hours as established practitioners.

169. It is notable that, among all the providers, there is a strong insistence in their published material on advance preparation, which is not counted as part of the 9 or 3 hours. (The South-Eastern Circuit recommends not less than 3 days' preparation.) They may also require the submission of written skeleton arguments and other materials for some of the advocacy exercises, either in advance or on the first day. Video-recording of all advocacy is also used on some courses.

170. As in so many areas of the Bar's educational activities, training is delivered by senior and retired practitioners and sitting and retired judges, working in teams, on an entirely voluntary basis. The trainer-trainee ratio is high. Our observations of the courses leave us in no doubt that the quality of the training is extremely good. The collective view of the working group, including our lay members and observers, is that the NPP courses are a great credit to the Bar. The NPP must be sustained.

### **Course content**

171. We have no recommendations to make with regard to the content of the advocacy courses, which are strongly influenced by the work of the Advocacy Training Council. They are in all cases delivered by trained trainers, and are cross-fertilised by ideas exchanged between different providers (each predictably believing that its courses are superior to those of the others).

172. There is in our view room for expanding the remit of the ethics programme. Training concentrates on the provisions of the Code of Conduct. It exposes professional dilemmas which are (or may be) covered by the Code. Some of the providers include practising solicitors as well as barristers and judges in their discussion groups. The solicitors offer insights into the problems discussed which are often quite different to those trained at the Bar. This is an excellent practice which we recommend all providers to adopt.



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173. The concept of “ethics” should be broadened to include wider considerations of the relationship between barristers, their instructing solicitors and their lay clients. In other professional courses this is sometimes labelled “client care”. The relationship between the Bar and the general public should also be considered. A more expanded view of professional ethics has been introduced, following the Pupillage Report, into the pupils’ practice management course and it should, in our view, be followed up with new practitioners. This element of training would be enhanced again by the presence of practising solicitors, and of non-lawyers.

### **Number of hours**

174. The present quota of 9 plus 3 hours of compulsory courses for new practitioners is in our view sufficient. If however the BSB accepts our recommendation that the number of CPD hours should be increased across the board to 24 each year, we recommend two changes to the Regulations in respect of new practitioners. First they should be required to undertake the same number of hours (ie 24) in each of their first three years of practice and not be permitted to discharge their obligations in a single year. Secondly, it would not in our view be fair to require new practitioners to undertake their 9 advocacy hours in addition to that quota. While the requirements for new practitioners should remain compulsory, all such hours of compulsory courses undertaken should count towards the total of 72 over the first three years, and be regarded as “verifiable”.

### **Role of the BSB**

175. The Pupillage Report (Recommendations 65 and 72) recommended that the BSB should become more actively involved in co-ordinating and overseeing both the compulsory pupillage courses and the training of pupil supervisors delivered by the separate Inns and Circuits. We make the same recommendation here, where there is also room for closer co-operation with the Advocacy Training Council. The BSB as regulator is ultimately responsible for the amount and quality of the training required by the CPD Regulations. It should in our view establish a forum of

## XIV: THE NEW PRACTITIONERS PROGRAMME

discussion between these various expert providers to enable ideas to be more actively exchanged and good practice to continue to develop.

### **Quality assurance**

176. Finally, we note that it is proposed that, at any rate for advocates practising in the criminal courts, a system of quality assurance may be introduced which will regulate the progress of criminal advocates through four levels of work, limiting their right to appear in a case graded at any given level until they have demonstrated competence progressively to undertake work at that level

177. We wish to emphasise again that CPD cannot be confused with quality assurance. We are not aware of any profession which puts the two together. The nearest we find is the set of proposals currently under consideration by the medical and dental professions in which the completion of a stated number of CPD hours will be regarded as one of a number of indicators entitling the practitioner to be “revalidated” for continuing practice; but there is no proposal that performance in CPD training of any kind will in any way be assessed for this purpose. Completion of CPD activities will be sufficient. Assessment of competence will be achieved by other means.

178. As it is at present arranged the NPP is simply part of the CPD required of all newly qualified barristers, whether they are criminal advocates or not. While performance is informally judged and (in some cases) practitioners may be required to repeat an exercise for a second time in order to improve performance, there is no formal system of assessment in place and the voluntary trainers who deliver the programme are not instructed or trained to carry out such an exercise.

179. The culture and practice of CPD is different from the culture and practice of quality assurance. The mixing of the two would be unusual and problematic.

## XV: THE FORENSIC ACCOUNTING COURSE

### XV

#### THE FORENSIC ACCOUNTING COURSE

180. The current Forensic Accounting Course (FAC) must be completed by barristers either during pupillage or as new practitioners during their first 3 years of practice. Since the course is attended mainly by new practitioners it was decided during the course of the review of pupillage (see Pupillage Report: Recommendation 68) that the course should be reviewed as part of the review of CPD.

181. The course has been provided nationwide by BPP under an exclusive three-year contract with the BSB. The initial period of the contract expired in 2008. It has been extended on a yearly basis pending the outcome of this review. BPP charges a fee of £340 plus VAT for attendance. The course is run about 20 times per year, with about 500 attendees over the year. The Advertising and Funding Regulations require that the fees of pupils are paid by their chambers or employers. Some but not all chambers also pay the fees of their new practitioners.

182. The FAC is a two day course which is accredited for 20 hours' CPD. It was designed to provide pupils and new practitioners with practical guidance in the use of financial information and accounts (both corporate and individual) and to enable them to understand the general nature of forensic accounting. Given the limited time available, the course is not designed to deliver in-depth knowledge of accounting. It aims to ensure familiarity with key accounting concepts, and to help barristers understand what to look out for in accounts, and speak the language of accounts. Participants can choose between courses run with a particular emphasis on the issues encountered in civil, family or criminal practice.

## XV: THE FORENSIC ACCOUNTING COURSE

183. Before attending the FAC, students must complete a compulsory e-learning module. On Day 1, students are taught about financial statements, the difference between profit and cash, the legislative requirements of company records and the preparation of a set of accounts. On Day 2, the syllabus includes analysing loss of profits, valuation, asset tracing, money laundering, investigation and company law. The tutors make extensive use of case studies and question and answer sessions, particularly on the second day.

184. For the purposes of this review, two members of the working group, including our accountant member, attended and observed a civil FAC. They found the course to be well-organised and well-taught. The written materials were extensive and useful for future reference. The tutors were knowledgeable and enthusiastic. Most delegates were fully engaged and some seemed to want the course to go into more detail than was possible in the time available. There were some areas where our members felt there was room for some minor improvements. First, the e-learning materials were relatively uninspiring, even making allowances for the introductory nature of the lectures and the accessibility requirements of any e-learning module. Second, the written materials needed a small amount of updating to reflect recent changes in company law and accounting standards. Third, on the course attended, neither tutor seemed entirely aware of what the other had taught. There should have been better communication between them and/or a review of each other's material. Fourth, the tutors could have made greater reference to the written materials which would give much of the detail for which there was insufficient time during the course. However, these were relatively minor observations, which did not detract from generally positive conclusions.

185. Since anecdotal reports of the course can be very mixed, our members also reviewed participants' feedback going back to June 2009. This feedback was generally, but not universally, positive. Most participants gave the tutors high scores and were generally, and at the least mildly, enthusiastic about the course. Some indicated that they did not think the course should be compulsory for all barristers

## XV: THE FORENSIC ACCOUNTING COURSE

and complained about the cost of the course and the quality of the e-learning materials. Others complained that they would have liked more guidance on their own personal tax affairs. It hardly needs to be said that the FAC is not designed to provide personal advice of this kind. It is however delivered to pupils as part of the practice management course.

186. Our members' overall conclusion was that pupils and new practitioners should continue to receive practical guidance in the use of financial information and accounts; that the FAC was pitched at roughly the right level and was of a suitable duration; and that the course is delivered at the right time in a barrister's career. The balance to be struck between content and length of course was thought to be right. Our members did however recommend that more rigorous systems should be put in place for analysis and consideration of feedback forms. Finally it was noted that for some barristers more in depth training would be required for certain areas of practice as part of their CPD as established practitioners.

187. In summary it was recommended that the course should be retained in its current form. The working group endorses these conclusions and recommendations.

188. There is an issue as to whether the BSB should continue to allow the course to be run by a single provider. This issue is outside our terms of reference.

## XVI: CONCLUSIONS AND RECOMMENDATIONS

### XVI

#### **SUMMARY OF OUR FINDINGS, CONCLUSIONS AND RECOMMENDATIONS**

*(Numbers in square brackets denote paragraphs in the report).*

##### **Findings and Conclusions (1 - 12)**

1. There is an abundance of activities and events (both accredited and unaccredited) from which barristers can choose to satisfy their CPD obligations [26-30]
2. The current system of monitoring compliance with the CPD Regulations shows that, out of some 15,000 practitioners, some 200-300 a year fail to comply with their obligations, on various grounds [39].
3. A disproportionate number of defaulters are sole practitioners, who cite personal difficulties for non-compliance [40].
4. The requirement that 4 hours a year out of the 12 prescribed for compliance must be “accredited” creates an income stream for the BSB from CPD providers which, when added to receipts from fines for non-compliance and fees for extensions of time and waivers, yields a net profit to the BSB, contributing to its general expenditure [44].
5. A comparison of the Bar’s CPD requirements with those of other professions shows, throughout different professions, wide variations in the amount of CPD; in the types of activity which are accepted for CPD; in the practice of accreditation of activities; in the way in which activities are recorded; and in methods of monitoring and enforcement [69].
6. Private study and experience in the workplace in particular are acceptable in some professions for CPD purposes [69-70].

## XVI: CONCLUSIONS AND RECOMMENDATIONS

7. There is however a generally accepted number of purposes which CPD is intended to promote: the development of relevant knowledge and skills in a practitioner's area of practice; keeping up to date with new developments in that area; giving confidence to receivers of services and the public that professionals are skilled in their area of practice; and maintaining an ethos of professional collegiality which advances knowledge, skills and good practice [71].

8. There is good evidence at the Bar [76-77] and better evidence from the medical profession [78-80] that CPD is effective in promoting those purposes, provided that it is sufficiently flexible and tailored to the individual's professional needs [81].

9. The present scheme for CPD at the Bar, especially the scheme for established practitioners, is nevertheless criticised on a number of grounds with regard to the number of hours required, the list of approved activities, formality, bureaucracy and expense [84-88].

10. There is no perfect system of CPD which can meet all criticisms. There is a discernible tension between the need to recognise the value of the full range of activities which contribute to professional development and the need to audit compliance [89].

11. Any activity which serves the purposes of CPD as described above should qualify for CPD [93] subject to there being in place a visible and practical system of audit [94].

12. The limited range of activities currently accepted by the BSB as qualifying for CPD appears to be over-influenced by a need to police the profession and identify and pursue defaulters; but it is a mistake to think that any system can be made foolproof [94]. We prefer a more open system which gives greater autonomy to and places more trust in practitioners [95].

## XVI: CONCLUSIONS AND RECOMMENDATIONS

### Recommendations (1-29)

- R1 We accordingly recommend a five-fold but composite and interlocking strategy which will:
- increase the range of approved CPD activities;
  - correspondingly increase the number of CPD hours which practitioners must undertake each year;
  - raise the standard of record-keeping;
  - simplify the system of reporting; and
  - simplify enforcement of the CPD Regulations. [90]
- R2 A more flexible definition of CPD should be adopted which will include any activity undertaken by a barrister relevant to his or her area of practice, outside normal professional commitments, which will serve the purposes of CPD as described above: see [117] where the full terms of our revised definition are set out.
- R3 The definition should be supported by a Table (see Table 6 in [112]) which is non-exhaustive and exemplifies the type of activity which will qualify [117]; but it will not preclude other activities which equally well serve the purposes of CPD and are relevant to the barrister's own area of practice.
- R4 The Table includes private study, and the development of a greater number of relevant professional and personal skills, and a wider range of training activities and work-shadowing than are currently accepted [112].
- R5 The new definition should also be supported by a Table (see Table 7 in [115]) which for the avoidance of doubt will list activities which are not acceptable for CPD purposes [117].



## XVI: CONCLUSIONS AND RECOMMENDATIONS

- R6 There should be no compulsory CPD topics for established practitioners [111]. However, all practitioners should be required to demonstrate a balance of CPD activities undertaken [116].
- R7 Within the framework of a more flexible scheme the required number of hours should be increased from 12 to 24 hours per annum [119]. Barristers should be trusted to count their hours as accurately as they can, without the imposition of artificial rules [120].
- R8 There should be no limit on the number of hours claimable for any activity (including writing books or articles) [121] except in the case of lectures, for which barristers may claim as time spent in preparation no more than twice the amount of time allocated to delivering the lecture [124]. Any excess time needed for preparation can be claimed as non-verifiable private study.
- R9 The current ban on claiming hours for an activity repeated in the same CPD year should be retained [125].
- R10 The current system of applying for extensions of time should be continued [127].
- R11 There should be no waivers of CPD requirements for barristers who wish to retain their practising certificates, notwithstanding their absence from practice for any reason; and the suspension of a practising certificate should not normally excuse a barrister from catching up with CPD as necessary when he or she applies for the certificate to be re-issued [128-130]. These cases should be covered by extensions of time [130].
- R12 Waivers should not be granted to barristers on the grounds of seniority or special eminence [132].

## XVI: CONCLUSIONS AND RECOMMENDATIONS

- R13 The distinction between “accredited” and “unaccredited” activities has outlived its usefulness and should be abolished [133].
- R14 The loss of the income-stream derived from the system of accreditation can be off-set by exploiting commercially the existing Bar Council’s CPD website as a means of advertising (without quality assurance) CPD events which any provider wishes to publicise [138].
- R15 A system of “verification” should be substituted for accreditation [139], which will require barristers to verify, by documentary proof, that they have undertaken not less than 12 CPD hours out of the required 24 in any year [140]. The writing of a legal textbook or article can be verified in the year of publication. Time spent on research and writing prior to the year of publication should count as non-verifiable private study [141].
- R16 Barristers should record their CPD activities (both verified and unverified) in an expanded and reflective form of record, which they must retain, together with a portfolio or other supporting documentation in respect of the activities which they wish to present as verified. Completing the record should not however become an elaborate and time-consuming process [142].
- R17 Private study and other non-verifiable activities should be appropriately recorded with particulars and dates [143].
- R18 The present system of checking compliance should be replaced by a new system whereby each practitioner returns (online) a signed declaration stating that the prescribed number of hours has been completed [145 & 147]. The record and portfolio referred to above should not be submitted at this stage but be retained for 3 years for possible audit [147].

## XVI: CONCLUSIONS AND RECOMMENDATIONS

- R19 An annual sample of not less than 10% of the retained records and supporting documents should be called in and checked annually by the BSB and in conjunction also with Chambers Monitoring. A further sample of these (again not less than 10% of those in the first sample with no issues identified) should be discussed in detail by the barristers in question with a senior member of the profession who would be willing to sign a declaration that the CPD Regulations have been complied with [149].
- R20 The declaration of compliance with CPD requirements described above should be submitted as part of a barrister's application for the renewal of his or her practising certificate. Barristers who for any reason cannot sign the declaration should apply for an extension of time and be granted a renewal of their certificate on giving an undertaking that they will make up the shortfall as directed by the BSB. Persistent offenders should be exposed to disciplinary proceedings and the possible suspension of their practising certificate on appropriate terms [156].
- R21 Corresponding rules should cover cases of barristers who have suspended their practising certificate and apply for it to be re-issued [157].
- R22 The BSB should develop a programme for assisting sole practitioners to comply with their CPD obligations [159].
- R23 The New Practitioners' Programme should be retained substantially in its present form [16 ].
- R24 The three hours ethics programme should be extended beyond considering problems arising out of the Code of Conduct and be attended by solicitors and non-lawyers [172 & 173].

## XVI: CONCLUSIONS AND RECOMMENDATIONS

- R25 If the annual requirement for CPD is increased from 12 to 24 hours new practitioners should be required to complete 24 hours in each of their first three years of practice and be entitled to count the whole of the compulsory NPP courses as part of that quota [174].
- R26 The BSB should procure better co-ordination between the Inns and Circuits who deliver the NPP compulsory courses to ensure consistency of practice and standards and to develop best practice [175].
- R27 The use of CPD for quality assurance purposes would be unconventional and problematic and should be treated with considerable caution [179].
- R28 The Forensic Accounting Course is in need of minor improvements [184]. Subject to those changes it should be retained substantially in its present form [187].

### **Next steps**

- R29 The Report of the Working Group, together with the Recommendations, Handbook and short summary ('CPD AT A GLANCE') should be circulated widely amongst the profession and other interested parties for a three month period following its submission to the BSB. The Handbook should be revised in the light of the comments and formally adopted by the BSB as the document contemplated by regulation 8 of the CPD Regulations and be submitted to the LSB for approval with a view to its coming into effect on 1st January 2013.

## **Annex 1: Code of Conduct [Extract]**

### **The Continuing Professional Development Regulations (Annex C)**

The Eighth Edition of the Code was adopted by the Bar Council on 18 September 2004 and came into force on 31st October 2004. It should be noted that it is under Review at the time of writing. The full Code of Conduct, is available at: <http://www.barstandardsboard.rroom.net/standardsandguidance/codeofconduct/section1codeofconduct/>

#### **Application**

1. These Regulations apply:
  - (a) to all barristers who have commenced practice on or after 1 October 1997;
  - (b) from 1 January 2003, to all barristers who were called to the Bar in or after 1990;
  - (c) from 1 January 2004, to all barristers who were called to the Bar between 1980 and 1989; and
  - (d) from 1 January 2005, to all barristers who were called to the Bar before 1980.
2. The Mandatory Continuing Professional Development Requirements  
For the purpose of these Regulations
  - (a) “calendar year” means a period of one year commencing on 1 January in the year in question;
  - (b) the “mandatory requirements” are those set out in paragraphs 3 to 7 below.
  - (c) a “pupillage year” is any calendar year in which a barrister is at any time a pupil.<sup>1</sup>
3. Any barrister to whom these Regulations apply and who as at 1 October 2001 had commenced but not completed the period of three years referred to in the Continuing Education Scheme Rules at Annex Q to the Sixth Edition of the Code of Conduct must complete a minimum of 42 hours of continuing professional development during that period.
4. Any barrister to whom these Regulations apply who commences practice on or after 1 October 2001 must during the first three calendar years in which the barrister holds a practising certificate after any pupillage year complete a minimum of 45 hours of continuing professional development.
5. Any barrister to whom these Regulations apply:
  - (a) must, if he holds a practising certificate or certificates throughout the whole of any calendar year, complete a minimum of 12 hours of continuing professional development during that period; and
  - (b) must, if he holds a practising certificate or certificate for part only of a calendar year, complete one hour of continuing professional development during that calendar year for each month for which he holds a practising certificate.

## ANNEX 1: CODE OF CONDUCT

6. Regulation 5 does not apply:
  - (a) in the case of a barrister to whom regulation 3 applies, to any calendar year forming or containing part of the period of 3 years referred to in regulation 3; or
  - (b) in the case of a barrister to whom regulation 4 applies, during any pupillage year or during<sup>2</sup> the first three calendar years in which the barrister holds a practising certificate.
7. Any barrister to whom these Regulations apply must submit details of the continuing professional development he has undertaken to the Bar Council in the form prescribed, and at the time specified, by the Bar Council.
8. The Bar Council may, by resolution, specify the nature, content and format of courses and other activities which may be undertaken by barristers (or any category of barristers) in order to satisfy the mandatory requirements.
9. The Bar Council may, by resolution and following consultation with the Inns, Circuits and other providers as appropriate, increase the minimum number of hours of continuing professional development which must be completed in order to satisfy any of the mandatory requirements.

### **Waivers**

10. The Bar Council shall have the power in relation to any barrister to waive any or all of the mandatory requirements in whole or in part or to extend the time within which the barrister must complete any of the mandatory requirements.
11. Any application by a barrister to the Bar Council for a waiver of any of the mandatory requirements or to extend the time within which to complete any of the mandatory requirements must be made in writing, setting out all mitigating circumstances relied on and supported by all relevant documentary evidence.

## ANNEX 2: CPD WORKING GROUP TERMS OF REFERENCE

### **Annex 2: CPD Working Group: Terms of Reference**

#### **Description**

The Working Party was set up to conduct the review of CPD (Education & Training)

#### **Functions/ responsibilities**

The CPD Review Working Group will have the following terms of reference:

To conduct a comprehensive review of the continuing education and professional development of practising barristers (in respect of both new practitioners and established practitioners).

To consider and make recommendations in relation to:

#### **principles:**

1. the need for a mandatory requirement of continuing education and professional development of practising barristers;
2. the nature, extent, content and structure of any such requirement ;
3. the means of satisfying any such requirement and any limitations thereon;
4. the need to be aware of the changing environment and changing needs following the Legal Services Act (or those in ABSs);

#### **specific areas:**

1. whether to introduce compulsory equality and diversity training as part of the new practitioners' and/or established practitioners' programme (in accordance with Recommendation 44 of the Neuberger Report) and, if so, the nature, extent and content of any such requirement;
2. whether to introduce compulsory advocacy and/or ethics training as part of the established practitioners' programme and, if so, the nature, extent and content of any such requirement(s);
3. Whether there are any other topics which should be introduced as a compulsory part of the training

#### **quality assurance of CPD:**

1. the regulations and procedures for the accreditation of course providers and courses including criteria for the removal or refusal of accreditation of providers;
2. the funding arrangements applying to the accreditation process;
3. the monitoring of course providers and courses by means of a robust, risk based approach including developing a sustainable, flexible monitoring system;
4. the appropriateness of CPD delivery online (including consideration of online methods) and how it should be quality assured; and
5. the guidance for practitioners on the CPD requirements and their satisfaction.

## ANNEX 2: CPD WORKING GROUP TERMS OF REFERENCE

The Working Group will carry out extensive consultation with the Inns (COIC and Education Committees), Circuits, practising barristers and other bodies that it may consider relevant. It is also anticipated that, when conducting its review, consideration will be given by the Working Group to the nature, extent, content and structure of other professions' continuing education and professional development obligations.

### **Schedule of meetings**

At least once a month (between January 2010 and December 2010) plus a scheduled away day. Meetings with Chambers/Practitioners, the Employed Bar and Circuits.

### **Quorum**

50%

### **Membership (principles)**

The membership of the Working Group should include:

- member(s) of the Education & Training Committee
- member(s) of the CPD Sub-Committee
- member of the Qualifications Committee
- member(s) of the Employed Bar (government and commercial)
- member of the Young Bar/New Practitioner
- member(s) of the Inns' Education and Training Committees
- lay member

NB The group will be kept small. But there will be extensive consultation and discussion with other groups (including members of other professions) during the process.

### **Reporting to:**

Education & Training Committee (Bar Standards Board and CPD Sub-Committee to be kept informed. Final report to BSB)

**Date of approval by BSB Education & Training Committee:** 8 April 2009

**Date of approval of terms and membership by BSB:** 19 November 2009



## ANNEX 3: MEMBERS OF THE CPD WORKING GROUP

### **Annex 3: Members of the CPD Working Group (20 January 2010 – 3 May 2011)**

Derek Wood CBE QC (Chairman)	Practising Barrister, former Principal of St. Hugh's College, Oxford
Michael Edenborough QC	Practising Barrister, Member of the BSB CPD Subcommittee.
Sue Edwards	Director of Legal Services, Department for Business, Innovation & Skills
Dr Kenneth Fleming	Director, Oxford University Clinical Academic Graduate School; Associate Dean, Oxford Post Graduate Medicine Deanery
Patrick Goodall	Practising Barrister, Chair of the BSB CPD Sub Committee, Member of the BSB Education & Training Committee
Jonathan Hirst QC (Vice Chair)	Practising Barrister
Rory Mullan	Practising Barrister, Member of the BSB Qualifications Committee
Richard Muschamp	Partner at the professional services firm Deloitte LLP
Emily Windsor	Practising Barrister, Special Adviser to the BSB, Vice Chair BSB Education & Training Committee
His Honour Judge Worsley QC	Senior Circuit Judge at the Central Criminal Court
<b>Observers/attending</b>	
Dr John Carrier (Chair)	Education and Training Committee, BSB
Dr Valerie Shrimplin	Head of Education Standards, BSB
Elizabeth Prats	Continuing Education Officer, BSB
Ruth Swinden	Continuing Education Assistant, BSB

## ANNEX 4: LIST OF CONSULTEES

### **Annex 4: List of Consultees (meetings and written submissions)**

#### **Bar Standards Board Committees**

- Bar Standards Board
- Complaints Committee (known as Professional Conduct Committee from 2011)
- CPD Sub Committee
- Education and Training Committee
- Equality & Diversity Committee\*

#### **Bar Council Committees**

- Equality and Diversity Committee
- Employed Bar Committee
- Training for the Bar Committee

#### **Inns of Court**

- Council of the Inns of Court (COIC)
- Inns Education Officers
- Gray's Inn
- Inner Temple
- Lincoln's Inn
- Middle Temple
- Middle Temple – NPP compulsory programme
- Advocacy Training Council

#### **Specialist Bar Associations**

- Administrative Law Bar Association
- International Association for the Protection of Intellectual Property
- Bar Association for Commerce Finance & Industry\*
- Chancery Bar Association
- Commercial Bar Association
- Government Legal Service
- Intellectual Property Bar Association
- Personal Injuries Bar Association
- Professional Negligence Bar Association
- Property Bar Association
- Technology and Construction Bar Association

#### **Other Institutions**

- Advanced Advocacy Training Working Party
- Bar Council of Ireland
- General Medical Council
- Law Society
- Law Society of Scotland
- Singapore Bar
- Solicitors Regulation Authority

## ANNEX 4: LIST OF CONSULTEES

### Individuals

Pam Bhalla, Bar Council Equality and Diversity Adviser\*  
Sarah Brown, Member of the BSB, Chair Practising Rules Group, BSB\*  
Brian Buck, Chief Accountant, Bar Council  
Ben Denison, Chief Information Officer, Bar Council  
Sara Down, Head of Professional Conduct  
Sue Carr QC, Member of the BSB, Chair Complaints Committee (2010)  
Dawn Elvy, Project Support Manager, Bar Council\*  
Neil Imber, Director of UK Learning, Deloitte  
Rob Miller, Accounting Assistant, Bar Council  
Pamela Ormerod, Lay member Qualifications Committee\*  
Linda J Stone, Lay Vice Chairman Qualifications Committee\*

\* denotes written submissions received

## ANNEX 5: LIST OF EVIDENCE AND RESEARCH

### Annex 5: List of evidence and research underpinning the review

#### Selected key references, earlier consultations

- Academy of Medical Royal Colleges (2010) *Continuing Professional Development: Frequently Asked Questions*.
- Academy of Medical Royal Colleges (2010) *Ten Principles of CPD*.
- Advocacy Training Council (2010) website: [www.advocacytrainingcouncil.org](http://www.advocacytrainingcouncil.org)
- Bar Standards Board (2009) *Chambers Monitoring Pilot Scheme, Final Report*.
- Bar Standards Board (2010) *The Development of authorisation to practise arrangements*, Consultation paper.
- Blueprint for the Future*, General Council of the Bar. [The Collyear report']
- BPP (2010), Course feedback for the Forensic Accounting programme.
- Collyear, (1999) *Report of the Collyear Committee, Education and Training for the Bar*.
- Deloitte (2010) *Continuing Professional Development: Our Approach*.
- DG Internal Market and Services (2011) *Consultation paper on the Professional Qualifications Directive*.
- Dutton, T. et al, (2004) *Report on the Assessment of Advocacy*. [‘The Dutton Report’]
- Faculty of Advocates (2010) *Continuing Professional Development: Information Pack*. Edinburgh.
- General Dental Council (2011) *Continuing Professional Development (CPD) for Dentists*.
- General Dental Council (2011) *Revalidation for Dentists: Our Proposals*.
- General Medical Council, Academy of Medical Royal Colleges (commissioners), (2010) *The Effectiveness of Continuing Professional Development*.
- Glick, I., (2000) *Report to the Education & Training Committee by the Continuing Professional Development Board*. [‘The Glick Report’]
- Hirst J., (2008) *Report on the ‘Co-ordination Post-Qualification Training at the Bar*. [‘The Hirst Report’]
- Horsley, T. et al (2010) ‘Maintaining the Competence of Europe’s Workforce’ *BMJ*, 2 Oct 2010, vol. 341, pp. 706-08.
- International Accounting Education Standards Board (2010) *Continuing Professional Development: A Program of Lifelong Learning and Continuing Development of Professional Competence*.
- Joint Advocacy Group (2010) *Consultation paper on proposals for a quality assurance scheme for criminal advocates*.
- Kemp, B. and J Matheson (2010) ‘Spotlight on CPD Evidence of a Regulatory Gear Change?’ *The Regulator*, August.
- Law Society CPD Centre: <http://cpdcentre.lawsociety.org.uk/>.
- Legal Services Act, 2007.
- NE Circuit (2009), Evaluation Summary of the Course (Ethics) for New Practitioners.
- Neuberger et al., (2007) *Entry to the Bar Working Party Final Report*, chaired by Lord Neuberger of Abbotsbury. [‘The Neuberger Report’]

## ANNEX 5: LIST OF EVIDENCE AND RESEARCH

- Prats, E. et al (2009) *Report of the Preliminary Review of CPD* (CPD Sub-Committee).
- Prats, E. and Swinden, R (2011) *Summary of CPD Complaints, January – June 2010: Live, Appeal and Adjudged cases.*
- Professional Associations Research Network (PARN) (2008) *Approaches to CPD Measurement.*
- Rose, N. (2010) 'Consumer call for Competence Test' Law Gazette, April.
- Royal College of General Practitioners, (2010) *Guide to the Credit-Based System for CPD.*
- Solicitors Regulation Authority (2010), *Continuing Professional Development – Guide to the Solicitors Regulation Authority CPD scheme.*
- Southwell, R., (1997) *Report of the Lord Chancellor's Advisory Committee on Legal Education & Conduct.* ['The Southwell Report']
- The Bar Council Law Library (2011) *Continuing Professional Development Scheme Rules.*
- The General Pharmaceutical Council (2010) *Regulatory Standards Development Programme: Continuing Professional Development Standards and Framework*
- The Law Society of Scotland, (2011) *CPD Requirements and Guidance* (for Scottish Solicitors).

### **BSB Internal documentation**

- Bar Council (2010) *Equality and Diversity Awareness Training – 'Toolkit'*
- Equality and Diversity Code for the Bar (2004), accessed at:  
<http://www.barstandardsboard.rroom.net/standardsandguidance/eanddcode/>
- Code of Conduct of the Bar Council of England and Wales* (2010) The General Council of the Bar of England and Wales
- Examples of CPD Complaints about CPD issues (derived from emails and other queries)
- Guidelines for CPD Course Providers*
- Minutes of the CPD Sub-Committee 2009 Meetings
- Paper from the CPD Waivers Panel
- Past papers relating to CPD Fee Waivers and Waiver Guidance & Criteria
- The CPD Information Pack (latest edition)*
- The General Guide to CPD (latest edition)*

### **Statistical Information and in-house research topics**

- Analysis of courses by providers type (January – December)
- Number of accredited CPD courses (2009 course delivery – month by month)
- Number of barristers referred to the Complaints Committee for non compliance
- Number of registered accredited CPD providers
- Online Database Hits Statistics
- Results of the May 2010 accredited courses questionnaire
- Results of the November 2010 accredited courses questionnaire

## ANNEX 5: LIST OF EVIDENCE AND RESEARCH

Statistics from the Qualifications Committee: extensions & waivers  
Statistics from the Professional Conduct Committee: Warnings, Fines, Formal Complaints

### **Requirements of other professions were considered, including:**

Association of Chartered Certified Accountants (ACCA)  
British Psychological Society  
Chartered Institute of Patent Attorneys  
Council for Licensed Conveyancers  
General Dental Council  
General Osteopathic Council  
Institute of Chartered Accountants in England and Wales (ICAEW)  
Institute of Chartered Accountants in Scotland  
Institute of Legal Executives  
Institute of Trade Mark Attorneys  
Master of the Faculties (regulate notaries)  
Nursing and Midwifery Council  
Royal College of Anaesthetists  
Royal College of GPs  
Royal College of Obstetricians and Gynaecologists  
Royal College of Physicians  
Royal College of Surgeons  
Royal Institute of British Architects  
Royal Institution of Chartered Surveyors  
Royal Pharmaceutical Society  
Royal Town Planning Association  
Law Society of Scotland  
Singapore Bar  
Solicitors Regulation Authority

## ANNEX 6: COMPARISONS WITH OTHER PROFESSIONS

### Annex 6: Comparative Analysis with other professions

Information was derived from a wide range of websites of professional bodies, not all of which are summarised here. Additional references are provided in the bibliography, Annex 5. Annex 4 records the discussions which took place with some of these bodies.

	<b><u>Examples of CPD activities (2010)</u></b>
<b><u>BAR STANDARDS BOARD</u></b>	Attendance at accredited CPD courses
12 CPD hours per annum 4 accredited/8 unaccredited	Attending university courses
	Training events
	Online courses
	DVDs, Videos and CD ROMs
	Presenting an unaccredited lecture
	Teaching on university courses
	Advocacy training, mock trials and moots
	Writing (maximum of 4 unaccredited hours)
<b><u>SOLICITORS REGULATION AUTHORITY</u></b>	Participation in accredited courses
16 CPD hours per annum At least 4 accredited hours	Participation in non-accredited courses
	Coaching and mentoring sessions of less than one hour
	Coaching and mentoring sessions delivered from a distance
	Writing on law or practice
	Work shadowing
	Research
	Production of a dissertation
	Listening to/watching audio/visual material offered by authorised providers
	Distance-learning courses where there is provision for the answering of enquiries or for discussion
	Preparation and delivery of training courses forming part of the process of qualification or post-admission training

## ANNEX 6: COMPARISONS WITH OTHER PROFESSIONS

	Work towards the Training and Development lead body Units D32, D33 and D34 relating to assessing and verifying the achievement of NVQs
	Participating in the development of specialist areas of law and practice by attending meetings of specialist committees and/or working parties of relevant professional or other competent bodies charged with such work
	Work towards the achievement of an NVQ in any business-related area and at any level
	Study towards professional qualifications
<p style="text-align: center;"><b><u>BAR COUNCIL OF IRELAND</u></b></p> <p style="text-align: center;">10 CPD hours per annum No accreditation scheme</p>	Attendance at conferences, courses or seminars (no formal accreditation process for courses)
	Teaching
	Training events
	Charing
	Research and Writing
	Post graduate legal studies
	Undergoing training in a one-to-one situation in online research
	Preparing curricula, reading guides, teaching materials etc., for CPD activities
<p style="text-align: center;"><b><u>THE FACULTY OF ADVOCATES</u></b></p> <p style="text-align: center;">10 accredited CPD hours per annum</p>	Attendance at accredited CPD courses, conferences, symposia
	Online courses
	Writing (maximum of 3 CPD hours)
	Faculty to the skills training programme
	Teaching on university courses
	Attending post-graduate university courses
	Bar National Mock Trial Competition and/or the Mini Trial Project
	Work for sub-committees of the Faculty's Law Reform Committee
	CPD activities undertaken as part of the requirements of the English Bar



## ANNEX 6: COMPARISONS WITH OTHER PROFESSIONS

<p><b><u>THE LAW SOCIETY OF SCOTLAND</u></b></p> <p>20 CPD hours per annum</p> <p>No accreditation scheme</p>	Seminars, courses, workshops (no accreditation scheme)
	Discussion groups
	Study meetings of special interest groups
	Private Study (undertaken by less than three persons) - no more than 5 hours per annum
	Distance learning by audio/visual/correspondence courses, television and radio courses
	The reading of relevant periodicals and books
	Writing relevant books or articles in periodicals or textbooks which are published
	Management training
<p><b><u>INSTITUTE OF LEGAL EXECUTIVES</u></b></p> <p>16 CPD hours per annum</p>	Attendance at courses or seminars in specialist or non-specialist areas
	Relevant Journal or Internet Articles 2010
	ITC Updates
	Distance Learning Courses (including e-learning) in specialist or non-specialist areas
	In-house training by employer in specialist or non-specialist areas
	Training by local ILEX or Law Society Branches in specialist or non-specialist areas
	Academic or professional study in specialist or non-specialist areas
	Production of a dissertation in specialist or non-specialist areas
	Research of a legal topic in specialist areas only
	Preparation and delivery of training courses in specialist or non-specialist areas
	Work shadowing in specialist or non-specialist areas
	Coaching or mentoring in specialist or non-specialist areas
	Participation in development of areas of law through Committee or Working Party activity - specialist areas only
	Writing on law or practice - specialist areas only

## ANNEX 6: COMPARISONS WITH OTHER PROFESSIONS

<p><b><u>ACCOUNTANTS</u></b> <b><u>(ICAEW)</u></b></p> <p>No set defined hours</p>	Course, conferences, seminars
	Reading
	Attending technical committee/discussion meetings
	e-Learning training
	Research and preparation for presenting training/examination courses
	Research for new work to be undertaken
	Webcasts, television programmes/listening to audio tapes
	Home study and revision for professional examinations
	Undergoing on-the-job training from colleagues
<p><b><u>GENERAL MEDICAL</u></b> <b><u>COUNCIL</u></b></p> <p>The GMC does not specify a number of hours Royal Medical Colleges stipulate for their members</p>	Attendance at courses and seminars & delivering lectures
	Writing papers
	Shadowing the work of others
	Being involved in clinical and professional supervision
	Attending multidisciplinary team meetings
	Visiting centres of excellence
	Being or using a mentor
	Learning from patients

ANNEX 6: COMPARISONS WITH OTHER PROFESSIONS

<p><b><u>GENERAL DENTAL COUNCIL</u></b></p> <p>250 CPD hours over 5 years 75 hours must be verifiable</p>	Courses and lectures
	Vocational Training or General Professional Training study days
	Educational elements of professional and specialist society meetings
	Peer review and clinical audit
	Distance learning
	Multimedia learning
	Staff training
	Background research
	Private study
	Journal reading
	Attending conferences
<p><b><u>GENERAL CHIROPRACTIC COUNCIL</u></b></p> <p>30 hours of learning 15 hours must be learning with colleagues or other professionals</p>	Courses
	Lectures
	Discussion/seminar groups
	Conferences
	Coached/mentored by another healthcare professional
	Peer group reviews
<p><b><u>GENERAL OSTEOPATHIC COUNCIL</u></b></p> <p>30 hours of CPD 15 hours must involve learning with others</p>	Structured osteopathic training courses
	Structured non-osteopathic training courses
	Lectures
	Group or practice meetings
	Higher Education
	Teaching/mentoring/tutorials
	Publishing
	Distance learning
	Reading and reviewing publications
	Internet research

## ANNEX 6: COMPARISONS WITH OTHER PROFESSIONS

<p><b><u>ROYAL INSTITUTE OF BRITISH ARCHITECTS</u></b></p> <p>At least 35 hours CPD a year, of which 19.5 hours must be gained from the RIBA CPD Core Curriculum syllabus, and 2 hours of health and safety</p>	Structured CPD – seminars. Conference and certified courses (which can be online)
	Reading books, journals and technical material
	Researching websites and blogs
	Sharing knowledge
	Mentoring
	Carrying out site visits and study tours
	Visiting trade shows and exhibitions
	Carrying out voluntary activities
	Teaching others
<p><b><u>ROYAL PHARMACEUTICAL SOCIETY</u></b></p> <p>Minimum of 9 CPD entries per year</p> <p>No accreditation scheme</p>	Learning knowledge and skills on conferences and courses
	Practice-based learning including feedback from patients and audit
	Analysis and review of critical incidents
	Self directed learning, including reading, writing and undertaking research
	Learning with others including peer review

## **Annex 7: Survey of CPD: May and November 2010**

### **Background**

A survey was carried out, on a sample basis, in order to gain feedback (from barristers attending) on accredited courses during May and November in the year (2010) in which the review was undertaken.

### **Methodology**

Questionnaires were used by all providers who were delivering accredited CPD courses in May and November 2010. It was made clear to providers that accreditation was on condition of the questionnaire being given/made available to all barrister delegates for completion. The questionnaire was paper based in the May survey but an online version was developed for use in November 2010. The questions used are given in full below, as are the data on returns.

Questions were almost identical for the two surveys, although the order was reversed in the November online version in order to focus more on views of CPD in general and in relation to the work and some tentative views of the Group as it made progress during 2010.

### **Analysis of results from the May 2010 survey (see Chapter IV)**

The analysis focussed on the questionnaire itself, which was carried out in hard copy/paper based. 180 questionnaires were completed by barristers and returned. In addition, a further 58 completed questionnaires were submitted from solicitors – these were not included in the analysis.

Some providers experienced difficulty with the hardcopy questionnaire, particularly those delivering CPD online. A separate analysis of responses, was provided by CrimeLine (an online provider), which has been kept separate from the analysis which the BSB produced.

The number of responses was noted with regard to the Titles and dates of courses, number of accredited hours, type and content of courses in relation to areas of practice and years of Call of participants.

From question 10 onwards, the analysis was more significant in that it then focused on delegates' views of the courses they attended. Results are presented in absolute numbers, of responses, as well as in the form of percentages for ease of comparison. Of particular interest were the following:

- 71.3% found the speakers very knowledgeable and effective
- (3.8% considered their course delivered at an acceptable level (neither too complex nor too basic

## ANNEX 7: SURVEY OF CPD

- Venues and resources were generally good
- 81.9% considered the current system fit for purpose and 80.1% agreed with the number of hours required (in 2010)
- The vast majority (82.9%) did not feel that requirements were difficult to satisfy, and 80.7% did not have difficulty finding relevant courses.
- However, fewer participants (75.6%) considered the system sufficiently flexible

Additional information focussed on the comments relating to Question 18(a-e) which, significantly, relates to views of CPD, whether it is fit for purpose whether the hours are appropriate, whether it is sufficiently flexible, assists in practice or not (see 'conclusions' section below).

### **Analysis of results from the November 2010 survey (see Chapter IV)**

In order to validate and cross check against the first (May) sample, a further questionnaire was used for a survey during November 2011. This was carried out online which resulted in a higher return. The higher return may well have been due to the online facility and/or the fact of more barristers undertaking CPD in November (ie late in the CPD year). Information and access to the questionnaire was distributed via all providers who received CPD accreditation for courses delivered in November 2010. The questionnaire was posted online via the Bar Standards Board website and 316 responses were received.

The primary focus of the analysis was, again, on the questionnaire itself. The data is summarised in the format of the original questionnaire for ease of reference. Data is given in both 'absolutes' and percentages. Some of the data is not easily transferable, particularly the questions which were 'open ended' and were free text. The main points from responses have been summarised but, as always, there is scope for further research and analysis. The use of an online system enabled multivariate analysis more easily to be carried out. For example, a cross-tabulation was carried out of the results in response to question 3 (employed/self employed) with question 18 (on views of CPD), so that views of the self-employed Bar can be seen as compared with those employed Bar (more of the self employed bar were in favour of a self-certification system). Elsewhere, cross-tabulations of the results from section 1 were also cross checked with responses to question 18, again for similar reasons (similar percentages view the current system as fit for purpose, and being the right number of hours, and easy to satisfy). In each cross-tabulation, both absolutes and percentages are given.

Whilst 316 responses were received in total, it should be noted that not all barristers responded to every question in the questionnaire so there will be some cases where the base total will add up to less than 316.

## ANNEX 7: SURVEY OF CPD

Of particular interest were the responses relating to question 2 of the online CPD Questionnaire. Answers in relation to question 2 (on relevance) vary but, overall, there were some strong criticisms about the current CPD system for the Bar. It should be noted however that negative comment may be more likely from those undertaking CPD later in the year. Common themes include, but are not limited to, the following:

- The current system is not sufficiently flexible, does not allow for part-time barristers or barristers juggling with maternity leave/motherhood;
- The current criteria (i.e. what can and cannot qualify as CPD) is too prescribed and does not allow for the diverse work of barristers;
- Recognition for preparation of work (lectures, legal writing etc) is far too low and is not realistic;
- The system is overly bureaucratic and is not measured against value or determined by practice areas/needs;
- The costs for accrediting and attending courses is too high;
- The current requirements for New Practitioners can often be too demanding;
- That which is often what keeps one up to date cannot qualify as CPD under the current rules;

In addition, the following suggestions were made by some barristers:

- There should be recognition for overseas practitioners and part-time practitioners;
- Barristers should be permitted to carry hours over to a subsequent year;
- There is great demand for recognition of soft skills courses;
- The Inns' should be required to update their course material more frequently – too often the material from previous years is used and is somewhat dated;

The following points were made in support of the current system:

- CPD encourages collegiality and allows practitioners to network with others in the same practice field;
- The current system would be suitably flexible if there were accredited courses that covered a wider selection of practices areas;

## ANNEX 7: SURVEY OF CPD

- The in-house courses for Employed barristers tend to meet the needs of practitioners and are of a high quality;
- The very large number of providers of CPD keep costs proportionate and allows for sometimes quite innovative and excellent CPD
- CPD can be a good career motivator;
- In comparison with Doctors and other professionals, the current requirements are not at all onerous.

### **Conclusions and further remarks**

Almost 500 barristers responded to the survey in May and November 2010 – amounting to a small, yet valid sample of the profession undertaking courses at those times. This reasonable sample of the views of the profession corroborates anecdotal and other information about the short comings of the current system and the need for review. Criticisms are sometimes strongly worded, but there is also significant support for the current (or a similar system) with the view expressed that CPD is necessary and not unduly onerous. There is scope for further work and analysis of practitioner views, which it is anticipated will be undertaken during any consultation process on the CPD Report and Recommendations.



## **May 2010 - CPD Course Feedback Questionnaire (details)**

### **Course details**

- Q1 Course title
- Q2 Date of the Course
- Q3 Number of Accredited CPD Hours
- Q4 Course length (HH+MM)
- Q5 Course type (attendance based/online/other)

### **Delegate Details**

- Q6 How did you find out about this course?
- Q7 Your area of Practice
- Q8 Year of Call
- Q9 Practice Status (self-employed, employed, non practising)

### **Course Evaluation (scale of 1-4 used, very good, good, poor, very poor)**

- Q10 Please indicate your views below
  - How knowledgeable and effective were the speakers?
  - How clear were the aims and intended learning outcomes?
  - How well did the course meet the learning outcomes?
- Q11 Course delivery
  - How did you rate the speaker(s)?
  - How appropriate was the method of presentation?
  - How would you rate the quality of the course materials?
- Q12 Please assess the course for relevance and usefulness to you?
- Q13 Please assess the course for ease of understanding
- Q14 Please assess the suitability of the course for delegates (basic, complex, acceptable)
- Q15 Course Venue and Resources
  - The quality of the venue and accommodation
  - How good were the course provider's admin/support services
  - Was the seating/room layout appropriate
  - Was the room well ventilated and/or heat controlled?
- Q16 Was there (yes/no):
  - A registration document for you to sign at the start of the session?
  - Course material available for you to take away with you?
  - A question and answer session?
  - Any quality assurance feed back material being collected by the provider for their own purposes?
- Q17 What is your overall rating of the course?
  - Based on your overall impression, would you attend another course delivered by the same provider?
  - Would you recommend the course to a friend/colleague?

### **General questions about CPD**

- Q18 CPD Views
  - Do you think that the current system is fit for purpose?
  - Do you agree with the minimum number of hours which barristers are required to accrue?

- Do you think that CPD requirements are difficult to satisfy?
  - Do you find it difficult to find CPD courses which are relevant to you?
  - Do you think the current CPD system is sufficiently flexible?
- Q19 Please comment on any of the answers to Q18 in further detail below  
[box for free text]
- Q20 How do you usually satisfy your CPD requirements (tick all applicable):
- By attending free seminars/lectures
  - By attending seminars/lectures which are charged
  - By delivering seminars/lectures yourself
  - By completing online training
  - By distance learning CPD
  - By providing Advocacy and Ethics training
  - By writing legal articles for publication
  - By lecturing at post graduate level or above
- Q21 Comments about CPD – please give any additional comments below  
[box for free text]

## November 2010 – Online CPD Course Feedback Questionnaire (details)

### General questions about CPD

- Q1 Your views on CPD
- Do you think that the current system is fit for purpose?
  - Do you agree with the minimum number of hours which barristers are required to accrue?
  - Do you think that CPD requirements are difficult to satisfy?
  - Do you find it difficult to find CPD courses which are relevant to you?
  - Do you think the current CPD system is sufficiently flexible?
- Q2 If you have any views which you would like to make in relation to Q1 please comment here [box for free text]
- Q3 If the mandatory 12 hour CPD requirement were abolished, would you prefer a self certification system? (yes/no/perhaps)
- Q4 How do you usually satisfy your CPD requirements (tick all applicable):
- By attending free seminars/lectures
  - By attending seminars/lectures which are charged
  - By delivering seminars/lectures yourself
  - By completing online training
  - By distance learning CPD
  - By providing Advocacy and Ethics training
  - By writing legal articles for publication
  - By lecturing at post graduate level or above
- Q5 What type of courses do you usually attend/complete? (area of practice and nature of courses)
- Q6 Please provide any additional comments below which you feel might be relevant to CPD and/or of interest to the CPD Working Group [free text]

### Course details

- Q7 Title of the course that you attended/completed in November
- Q8 Date of the Course
- Q9 Number of Accredited CPD Hours
- Q10 Course length (HH+MM)
- Q11 Course type (attendance based/online/other)
- Q12 How did you find out about this course?

### Course Evaluation (scale of 1-4 used, very good, good, poor, very poor)

- Q13 Please indicate your views below
- How knowledgeable and effective were the speakers?
  - How clear were the aims and intended learning outcomes?
  - How well did the course meet the learning outcomes?
- Q14 Course delivery
- How did you rate the speaker(s)?
  - How appropriate was the method of presentation?
  - How would you rate the quality of the course materials?
- Q15 How appropriate was the method of presentation?

### Delegate Information

- Q16 Your area of Practice
- Q17 Year of Call
- Q18 Practice Status (self-employed, employed, non practising)

## **Appendix B Draft CPD Handbook**



REGULATING BARRISTERS

**Draft Handbook for Continuing Professional Development**

**For use from 1 January 2013 (subject to consultation)**

**Education Standards Department  
Bar Standards Board  
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London  
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## Introduction

The Bar Council is recognised by the Legal Services Board ('LSB') as the Approved Regulator for education and training for the Bar. This Handbook has been produced by the Bar Standards Board ('BSB') as the independent regulatory arm of the Bar Council since January 2006. It is the official reference document for Continuing Professional Development ('CPD') and was formally adopted by the BSB, following consultation, at its meeting on [Please note: this handbook is subject to consultation, will be put to the Board for adoption following this period and therefore may be subject to amendment prior to introduction], pursuant to its authority delegated from the Bar Council as the Approved Regulator, overseen by the Legal Services Board. It must be adhered to by practising barristers from the calendar year 1 January 2013 - 31 December 2013.

A review of CPD for the Bar was conducted from January 2010 to April 2011 under the Chairmanship of Derek Wood CBE QC. Full details of the consultation process and methodology leading to the development of this document are provided in the Report of the Wood Working Group on CPD which is available separately. Recommendations were made to the Bar Standards Board at its meeting on 19 May 2011 concerning ways in which the current system could and should be revised. Following a further consultation process, this [draft] Handbook brings together previously existing material, regulations and guidance into one place, revised and updated in accordance with the recommendations made by the Working Group that were accepted by the BSB. It is designed to be of use to all practising barristers, for whom CPD is a requirement under the Code of Conduct. It is also the key source of information for others involved in, or seeking information about, the process of CPD for barristers.

Key sections of the Bar Training Regulations (BTRs) and the Code of Conduct are highlighted in each section as appropriate, with webpage references provided to full versions of those documents. Information on administrative and quality assurance procedures to be followed as required by the BSB and LSB is also provided. New Practitioners (those of less than three years in practice) should pay special attention to Appendix C.

The Education Standards Department of the BSB will revise and update this Handbook periodically in order to ensure currency, and to provide additional guidance and clarification as necessary. Updated information will also be maintained on the website of the Bar Standards Board.

Comments and queries should be directed to:

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# 1 The Regulatory Framework for CPD

## 1.1. The principles of CPD

The Bar Standards Board is committed to ensuring that the profession continues to offer legal services of high quality. On completion of training barristers will have acquired the minimum of knowledge and skills to enable him or her to supply legal services to clients at a competent and professional level. However, education and training undertaken prior to qualification cannot supply all the relevant knowledge and skills that are needed throughout a career at the Bar. In order to maintain and enhance the quality of legal services that they offer, barristers continuously need to update and improve their skills.<sup>2</sup> In the context of changes and increasing competition in the legal services market, they must be able to adapt to the changing demands of the public, individual clients, and their own careers.

CPD is also necessary in terms of the Regulatory Objectives as defined in the Legal Services Act 2007 (Part 1, section 1(1)-(4)). Compliance is an obligation of the Code of Conduct (para. 202) and is essential if barristers are to maintain and improve their knowledge and skills. The BSB will continue to monitor CPD to ensure that all practitioners benefit from relevant, worthwhile and affordable CPD. The system from January 2013 is designed to:

- increase the range of CPD activities
- increase the number of CPD hours
- raise the standard of record keeping
- simplify the system of reporting
- streamline enforcement of CPD by linking it to the practising certificate.

## 1.2. The definition and purpose of CPD

CPD for practising barristers is defined in the Wood Report on CPD (para. 117) as follows:

*CPD is any activity undertaken by a barrister which is relevant to the barrister's areas or proposed areas of practice but is not part of the barrister's normal professional commitments which will:*

- *develop or improve the barrister's knowledge of the subject-matter of his or her practice or proposed practice and develop to a high standard the skills required to conduct that practice*
- *keep the barrister up to date with new knowledge and skills relevant to that practice*
- *give clients and the public confidence that the barrister is skilled in the areas of practice in which his or her services are required*
- *create by participation in organised CPD events a collegiate ethos at the Bar which will contribute to the advancement of knowledge, skill and good practice within the profession.*

## 1.3. CPD activities

The way that barristers engage in CPD activity will depend on their areas of specialism, their priorities, opportunities available and their own personal learning

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<sup>2</sup> For details of the historical development of CPD requirements for practising barristers, see the Wood Report on CPD, Chapter II.



styles and preferences. CPD is based on the concepts of lifelong learning: that there is always room for improvement; that it is always possible to learn from experience; and that the best can still be better. CPD can help practitioners to:

- increase knowledge
- keep up to date
- maintain professional competence
- improve existing skills
- develop new skills (professional or interpersonal)
- extend/expand professional competence
- set and achieve new goals, e.g. developing further specialisms
- become more marketable (in existing and future areas of practice)

Individuals should plan their CPD carefully so that personal needs as well as formal requirements are met. Activities should be planned across the year (rather than left until the end of the cycle) so that CPD will be manageable, achievable and of clear benefit to all those involved. By means of careful planning, the skills and knowledge needed to achieve each individual's goals in his/her professional development can be identified and addressed. Portfolios that identify aims and learning goals on an annual basis can be used for self-evaluation, to help identify professional and personal needs. Careful consideration of strengths and weaknesses, coupled with periodic reflection on what has been learnt and what is still needed in everyday practice is very valuable. A typical 'Plan-Do-Check-Act' cycle can be used so that practitioners will effectively:

- analyse strengths and weaknesses
- assess needs in terms of what should be developed
- make a plan
- carry out activities
- record verifiable and non-verifiable CPD
- review and reflect on what has been learnt
- implement learning into practice
- regularly review, analyse and appraise their own needs
- integrate CPD into day-to-day work
- revise the plan as needed and keep to it



For advice and guidance on how to organise and select CPD activities, see Appendix D.

#### 1.4. Principles of Regulation of CPD by the BSB: The Code of Conduct

As the independent regulatory board of the Bar Council, the BSB is responsible for regulating barristers called to the Bar in England and Wales. It takes decisions independently in order to promote and safeguard the standards of legal education and practice in the interests of professional and lay clients, the public and the profession. The purpose of the BSB is to provide specialist regulation of advocacy and expert legal advice in the public interest. This is achieved by setting standards for the profession and by ensuring that professional practice puts consumers first. It is the role of the BSB to regulate practice in a way that balances the interests of the users and the providers of services. The Code of Conduct is available at: <http://www.barstandardsboard.org.uk/standardsandguidance/codeofconduct/>.

Responsibilities of the BSB extend to the regulation of CPD requirements, as defined in the Code of Conduct (para. 202).<sup>3</sup> The link between compliance with CPD requirements and authorisation to practise as a barrister is expressed as follows:

**Code of Conduct**, para. 202 [extract]:  
Subject to the provisions of this Code a barrister may practise as a barrister provided that ... (b) he has complied with any applicable requirements of the Continuing Professional Development Regulations (as reproduced in Annex C)

The importance of CPD in terms of the practising certificate is emphasised again in Annex C:

**Annex C - The Continuing Professional Development Regulations** [extract]  
5. Any barrister to whom these Regulations apply: (a) must, if he holds a practising certificate or certificates throughout the whole of any calendar year, complete a minimum of 12 hours of continuing professional development during that period; and (b) must, if he holds a practising certificate or certificate for part only of a calendar year, complete one hour of continuing professional development during that calendar year for each month for which he holds a practising certificate....

In addition, the BSB has authority to require barristers to submit details of CPD undertaken:

**Annex C - The Continuing Professional Development Regulations** [extract]  
7. Any barrister to whom these Regulations apply must submit details of the continuing professional development he has undertaken to the Bar Council in the form prescribed, and at the time specified, by the Bar Council.

Finally, the BSB also has authority to specify the nature and content of mandatory CPD requirements, and (with consultation) to increase the number of hours required:

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<sup>3</sup> NB all references to the Code will be updated as and when any revised drafts become available.

**Annex C - The Continuing Professional Development Regulations [extract]**

8. The Bar Council may, by resolution, specify the nature, content and format of courses and other activities which may be undertaken by barristers (or any category of barristers) in order to satisfy the mandatory requirements.

9. The Bar Council may, by resolution and following consultation with the Inns, Circuits and other providers as appropriate, increase the minimum number of hours of continuing professional development which must be completed in order to satisfy any of the mandatory requirements.

### **1.5. Authorisation to Practise**

There is an obligation for all practising barristers to undertake CPD. Compliance with CPD requirements is necessary for practice as a barrister. The practising year will change from 2011 to run from 1 April to 31 March (e.g. 1 April 2012 – 31 March 2013). The CPD year will however continue to run from 1 January to 31 December each year in order for any issues (e.g. non compliance) to be resolved before renewal of the practising certificate becomes due at the end of March each year. Penalties for non-compliance with CPD requirements may result in various sanctions, ranging from the need to apply for and obtain an extension, a monetary fine or, in severe cases, non-renewal of the practising certificate.

### **1.6. Role of BSB as Regulator of Education & Training**

The Bar Training Regulations (BTRs) 2009 set out the training that a person must complete, and other requirements that a person must satisfy in order to be called to the Bar by an Inn and be qualified to practise as a barrister. They are available on the BSB website at:

<http://www.barstandardsboard.org.uk/assets/documents/BTR%2009.pdf>. A fully comprehensive review of the Bar Course and Pupillage stages of Education and Training for the Bar took place 2007– 2010. The role of the BSB as regulator of education and training for CPD is expressed in the Bar Training Regulations (BTR3):

#### **BTR3**

3. To become qualified to practise as a barrister a person must ... (c) satisfy such further requirements as are set out in the Code of Conduct.

3A. The general objective of these Regulations is to ensure that any person who becomes qualified to practise as a barrister is a fit and proper person and competent to do so.

3B. Where these Regulations confer upon the Board a discretion to be exercised either in individual cases or generally (by the publication of criteria or otherwise), such discretion shall be exercised in a manner likely to promote the general objective of these Regulations.

3C. The Board shall publish from time to time a general statement of the minimum level of competence reasonably to be expected of a barrister when first qualified to practise.

### **1.7. The Equality and Diversity Code**

All barristers must be familiar with statutory regulations and good practice relating to all areas of equality and diversity. They must be sensitive to issues of ethnicity, gender, disability, religion, culture, age, sexuality, ethnic origin and nationality,

which should be applied to all areas of their professional lives. All those involved in practice should make themselves familiar with the Equality and Diversity Code (2004), available at: <http://www.barstandardsboard.rroom.net/standardsandguidance/eanddcode/>. At present there is no mandatory requirement for training in Equality and Diversity for members of the Bar, but all practitioners should familiarise themselves with the Equality and Diversity section of the Code. The Equality & Diversity Code is currently being revised and is due to be reissued in mid 2011. A toolkit for use in recruitment is also being developed.

## 2 CPD for Practising Barristers

### 2.1 Key features

The main elements of the CPD requirements are as follows:

- **The New Practitioners Programme (NPP)** - New Practitioners must undertake CPD requirements as specified for all practitioners, but including compulsory courses on advocacy and ethics.
- **The Forensic Accounting course (FAC)** – The FAC must also be undertaken by the end of the first three years of practice if not undertaken during pupillage (see Appendix C for details).
- **The Established Practitioners Programme (EPP)** – Established Practitioners are required to undertake 24 hours of CPD each year, of which 12 hours must be verifiable while 12 hours may be non-verifiable. (For indicative lists of what can be included in each category see below sections 2.4 and 2.5).
- **CPD Declaration** – A Declaration form stating that the minimum hours (including the minimum number of verifiable hours) have been undertaken each year must be submitted to the BSB annually by the 31 March as part of the application for the Practising Certificate.
- **CPD Portfolio** – In addition to the Declaration form, barristers must retain their own records of CPD undertaken, using the Portfolio proforma. Portfolios will be sampled by the BSB to ensure compliance with requirements. Portfolios may also be sampled as part of Chambers monitoring or other processes.
- **Courses and Activities** – The BSB no longer accredits courses for the purpose of CPD. Suitable courses are available through the Bar Council, Inns of Court, Circuits and Specialist Bar Associations ('SBAs') as well as a wide range of commercial providers. It is up to practitioners to determine their needs and attend/undertake suitable courses and activities as appropriate. Information about Bar CPD Courses and events is available on the Bar Council website at <http://www.barcouncil.org.uk/news/BarCPDCoursesandEvents/>.
- **Extensions** – Applications for an extension to the time allowed for meeting requirements (for example due to illness, career breaks, caring responsibilities etc) may be made.
- **Waivers** – There are no waivers of CPD requirements for barristers who wish to retain their practising certificates, notwithstanding their absence from practice for any reason; and the suspension of a practising certificate should not excuse a barrister from catching up with CPD as necessary when he or she applies for the certificate to be re-issued. These cases should be covered by extensions of time.

### 2.2 Requirements for New Practitioners

Newly qualified barristers are required to complete the New Practitioners Programme (NPP) during their first three years of practice. New Practitioners, during the first three years of practice, are required to undertake 24 hours of CPD

each year, of which 12 hours must be verifiable. This must include nine hours of approved Advocacy training and three hours of approved Ethics training during the first three years. Full details of the requirements and specifications for compulsory courses for New Practitioners are provided in Appendix C.

### **2.3 Requirements for Established Practitioners**

At the end of the first three years of practice and completion of the New Practitioners Programme (NPP), barristers are required to complete the Established Practitioners Programme (EPP). From January 2013, practitioners are required to complete 24 hours of CPD per year. This must consist annually of a minimum of 12 hours that must be verifiable while the remaining 12 hours do not need to be verifiable. It is not possible to carry CPD hours over from one year to the next.

Information on CPD courses run by the Inns, the Circuits and the SBAs is provided on the Bar Council website that was set up as a result of the Hirst Report (2009). See: <http://www.barcouncil.org.uk/news/BarCPDCoursesandEvents/>. For further information about each course, please visit the respective provider's website. Some information about commercial courses is to be found in a separate subsection of this site. Inclusion in this directory does not indicate accreditation of those courses, nor should it be taken as an indication of the quality of the courses/events.

### **2.4 Verifiable hours**

Verifiable hours can be undertaken by means of attendance at courses, conferences, lectures or seminars, or by speaking at such events. Evidence of the event must be possible, must be saved and / or recorded by the practitioner, and may be called on for scrutiny. Any registers taken at such events should be signed, and may be checked. There is no maximum limit for the hours that may count for any particular activity (save for the preparation of a lecture or training session). It is the precise time spent that will count and must be recorded. Examples of 'verifiable' activities include but are not limited to:

#### **Participation in courses etc.**

- Attending a professional course, lecture, seminar, conference or similar event.
- Attending a university course.
- Participating in an online course.

#### **Judicial etc. training and work shadowing**

- Training as a judge, recorder, tribunal member or chairman, arbitrator or mediator.
- Attending an organised scheme shadowing anyone exercising the above functions.
- Acting as a judge's marshal.
- Acting as a Judicial Assistant.

#### **Development of personal and practical skills**

- Attending an advocacy training course.
- Attending a course for the development of any other relevant personal and practice management skills.
- Equality and diversity training.

## **Teaching**

- Preparing and delivering a lecture or training session on any of the above (preparation capped at twice the length of the lecture).
- Teaching on a pupils or new practitioners course at an Inn, on Circuit or for a Specialist Bar Association.
- Teaching on a university law course.
- Acting as a member of a court or tribunal at a moot, mock trial or similar event.
- Undertaking training as a pupil supervisor.

## **Legal writing**

- Publishing a book or article.

## **2.5 Non-verifiable hours**

Non-verifiable activities should be undertaken according to the needs of individual practitioners. Activities that are non-verifiable, *i.e.* not capable of being independently documented, include for example the reading of law reports. There is no maximum limit for the hours that may counted, rather the 'actual' hours taken should be recorded. Non-verifiable activities include but are not limited to private study

### **Private study**

- Reading by way of private study law reports, statutes, legal journals or similar materials otherwise than for the purpose of publication or providing legal services to a particular client.
- Viewing or listening to relevant broadcasts having a professional legal content.
- The writing of a legal textbook or article can be verified in the year of publication. Time spent on research and writing prior to the year of publication should count as non-verifiable private study.

## **2.6 Activities that are not allowable**

The following may not be counted either as 'verifiable' or 'non-verifiable':

- Supervising pupils.
- Sitting in any judicial capacity.
- Sitting as a chairman or member of a tribunal, or as an arbitrator.
- Acting as a mediator.
- Teaching students below the level of an undergraduate degree.
- Unofficial networking activities such as running a personal website, blog, legal commentary or online diary.
- Participating in personal career development events or similar activities, such as learning interview- or CV-writing techniques.
- Giving careers talks.
- Participating in marketing events including social and networking events, as well as events directed at enhancing or developing sources or quantities of work.
- General networking by attendance or speaking at dinners and other social occasions, book launches, tours, receptions, court visits or general meetings.

## **2.7 Other activities**

Training in Advocacy and Ethics is compulsory for New Practitioners, but there are no elements of CPD that are compulsory for Established Practitioners. However,

the following areas are regarded as important for many practitioners and suitable courses should be undertaken where relevant:

- Advanced Advocacy training.
- Further Ethics training.
- Equality and Diversity training.
- Costs.

The Advocacy Training Council (ATC) provides information on all matters relating to advocacy training. Details are provided on the ATC website, (<http://www.advocacytrainingcouncil.org/>) .



## **3 Record Keeping by Practitioners**

### **3.1 Requirements**

All practising barristers are required by the Code of Conduct to provide the Records Office with full contact details (address, telephone numbers, emails and fax) of the Chambers or office from which he/she is supplying legal services. A CPD Declaration of compliance must be submitted on or before 31 March each year as part of the authorisation process for renewal of the practising certificate.

#### **CPD Declaration**

All practising barristers must declare annually that they have completed the requisite amount (24 hours) of CPD in the year to which the declaration pertains, and of which a minimum were 12 verifiable hours. Further, he/she must declare that activities undertaken were relevant to their current and/or proposed areas of practice and were sufficient in terms of time, balance and range of activities in order to achieve his/her personal objectives in terms of keeping knowledge and skills up to date.

#### **CPD Portfolio**

In addition, barristers are obliged to complete and retain a reflective account of their CPD activities. They should clearly set out the reason why each activity was undertaken and its relevance to his/her practice. They must retain comprehensive records (with evidence) of verifiable CPD undertaken, as well as a record of the non-verifiable CPD that they have done. This must be recorded in a personal CPD Portfolio, which may need to be produced for the BSB for sampling purposes. Evidence must be retained in order to demonstrate that CPD activities were relevant and meaningful to individual development needs. For example, a certificate may be obtained for events attended, which states the date, place, title and nature of the event and confirms the barrister's attendance. If the barrister is organising the event, or speaking or teaching at it, he/she should keep documentary proof of the event, in the form of an advertisement or similar which records his or her participation in it. Filling in the Portfolio need not be an elaborate or time-consuming exercise. Short notes will suffice. The use of a Portfolio will encourage practitioners to think more deeply about the value of the activity recorded and aid future planning. Documentation relating to verifiable activities must be held with the Portfolio record. This documentation must be retained for three years following the relevant calendar year.

**Note:** Proformas for the CPD Declaration and the CPD Portfolio are available on the BSB website. The online system will facilitate monitoring due to such features as acknowledgements, reminders, recommendations, checking, analysis etc. Courses and activities should be counted according to actual time taken, not rounded up or down. The totals per annum must be in line with specified requirements. There are no 'caps' for individual activities except time spent on preparation of lectures/presentations and training sessions (capped at twice the length of the presentation/session).

### **3.2 New Practitioners (first three years of practice)**

New Practitioners are required to complete the CPD Declaration and to maintain their own CPD Portfolio records of attendance at the NPP and for other (verifiable or non-verifiable) CPD activities. They must ensure that they complete the required

number of hours of training. Information and documentation must be retained in the form of a CPD Portfolio, which may be monitored. The BSB will (liaising with the Inns) maintain a record of attendance at advocacy and ethics courses. Pro-rata arrangements may be agreed where part of a CPD year is completed following appointment after completion of pupillage. Record keeping requirements for New Practitioners are the same as for Established Practitioners.

### **3.3 Exceptions and extensions**

If for any reason the barrister cannot certify that he or she has accumulated the required number of CPD points for that calendar year, it will be permissible to certify that an application for an extension of time has been or is being made for making up the shortfall, and that the barrister will comply with any directions for doing so. If CPD hours are not completed within a given CPD year (January – December), outstanding hours can be accrued at the beginning of the following year, but an automatic fine of £100 will be payable. Hours must not be double counted (*i.e.* again in the following calendar year) if some are completed during the period following the CPD year in question.

### **3.4 Suspension or non eligibility for practising certificate**

Where a practising certificate is held for fewer than twelve months in any year (due to the timing of appointment, illness, maternity leave or sabbatical etc), a pro rata number of hours must be completed for each month or part month of practice, that is two hours per month of practice, of which at least one hour per month of practice is verifiable. The Declaration must still be completed as appropriate and documentation retained with the Portfolio for possible monitoring purposes. Barristers should self-certify any extended period of absence when no practising certificate has been held and pro-rata their CPD accordingly, as above. Evidence should be retained with the portfolio – eg medical certification.

### **3.5 Non-submission**

Non-submission of the annual CPD declaration, and / or the inability to provide an adequate record in the form of a portfolio, is regarded as a Code of Conduct issue, and will be investigated. If, for no good reason, no or no sufficient declaration is submitted, the BSB will investigate the matter with the barrister concerned.

## **4 Provision of CPD courses and activities**

### **4.1 Providers of CPD (verifiable)**

The BSB wishes to encourage a flexible and varied programme of continuing professional development for practitioners, including lectures, seminars, conferences, workshops and training sessions. Courses and events delivered by Inns of Court, SBAs, Circuits and Chambers are particularly recommended. Commercial providers may also provide a very wide range of appropriate courses. It is up to individuals to determine their own needs and the relevance of the courses, lectures, seminars and other events and activities that they undertake. Activities and courses will be acceptable if the content and objectives fit within the BSB specifications of verifiable CPD, as above, section 2.4. Compliance will be monitored on a sample basis.

### **4.2 Individual (non-verifiable) activities**

Similarly, non verifiable activities must be determined and selected by individual practitioners according to their own needs and wants. Examples of activities that are acceptable as 'non-verifiable' are listed in section 2.5, but other categories may be included if appropriate. In the event of queries, the CPD section of the BSB should be contacted. Records must be maintained of the nature and extent of activities that are not independently verifiable. Portfolios may be audited.

### **4.3 Co-ordination of CPD activities by Inns, Circuits and SBAs**

Following the Report (November 2008), by Jonathan Hirst QC, on the Co-ordination of Post-Qualification training at the Bar, a website was created by the Bar Council on which the Inns, the Circuits and the SBAs are encouraged to post information about events. It is available on the Bar Council website, see <http://www.barcouncil.org.uk/news/BarCPDCoursesandEvents/>.

### **4.4 Other Providers (Not-for-profit and commercial)**

In the new system, no formal accreditation is required of other commercial or non-commercial providers of courses for CPD for the Bar. This has been discontinued due to the impossibility of quality assuring the large number of commercially provided courses (involving some 600 providers and 6,000 courses). It also means that providers will no longer be able to use the BSB logo, state or otherwise imply that their courses are accredited and quality assured by the BSB to a certain standard, including fitness for purpose and/or value for money.

## **5 Monitoring and enforcement of requirements**

### **5.1 Principles**

In order to meet the regulatory requirements set by the BSB, and overseen in turn by the LSB, CPD requirements will be monitored and enforced. In accordance with the Code of Conduct,<sup>4</sup> non-compliance with any part of the above will be regarded as a disciplinary issue.

### **5.2 Monitoring Compliance**

Following the submission of CPD Declarations as part of the process for the annual renewal of the practising certificate, the Bar Standards Board will carry out a preliminary electronic check on all Declarations and then audit a percentage of these (approximately 10%). This may identify a number of returns that require further discussion. Following this, scrutiny of a further sample (of approximately 10% of the first sample where no issues were identified) will take place. Sanctions and penalties will be instigated against those who are found not adequately to comply. Once an individual has been selected for sample checking he/she will be notified by letter or email and asked to provide detailed evidence of activities undertaken. This may be followed up by email correspondence, letter, telephone call or in some cases a meeting, in order to check whether requirements have been met. If a practitioner who is selected for sample monitoring does not co-operate or refuses to take part, warning(s) will be issued after which sanctions will be applied. In addition, the BSB will require members of chambers to produce their CPD records during any Chambers Monitoring exercise.

### **5.3 Non-completion of the minimum requirements**

If a barrister has not completed the minimum number of hours of CPD, they may be referred to the Professional Conduct Committee for breach of the Code of Conduct, which may impose penalties for failure to comply with the CPD requirements. Sanctions may range from a monetary fine or, in extreme cases, non-renewal of the practising certificate or disbarment for serious repeat offenders. In the case of a first offence, directions for making up the shortfall will be provided and a warning issued that repeated defaults will be investigated and may lead to the denial of a practising certificate in the future. Where there is persistent default the Professional Conduct Committee will decide whether the current practising certificate should be discontinued or continued with conditions attached, having regard to the barrister's existing commitments.

### **5.4 Chambers Monitoring**

The system of Chambers Monitoring may eventually cover the collective CPD activities and requirements of members of Chambers with consideration and/or scrutiny of the collective CPD records of members of Chambers as part of Chambers Monitoring.

### **5.5 Appraisal systems - Employed Bar**

The existence and value of internal annual appraisal systems in organisations with employed barristers is recognised. The CPD Declaration must be completed and a

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<sup>4</sup> Code of Conduct, para. 202.

CPD Portfolio maintained in all cases. This is likely to be helpful for internal procedures at the Employed Bar but will also need to be maintained for possible sampling purposes.

## **6 Support, counselling and advice re CPD**

### **6.1 Principles**

In certain circumstances, some practising barristers may find it difficult to meet the minimum CPD requirement. Members who are ill, working few hours, working on their own, on maternity or paternity leave, or working abroad where it is difficult to access adequate CPD may find completion of the requirement challenging.

The BSB is aware of these issues and this section is therefore focussed on support and advice for those in such situations with regard to their CPD. The general policy is to ensure that those who find themselves in such situations can keep up to date as necessary. The new system, with increased flexibility should help with this, as a result of the new focus on independent self evaluation by means of verifiable and non-verifiable activities. There are increased possibilities now to include online journals, distance learning, podcasts, webinars and other online sources.

### **6.2 Break from practice**

If a barrister is taking a break in practice for any reason that will prevent completion of CPD requirements (e.g., illness, study leave, career breaks, caring responsibilities) then he/she might wish to consider suspending the practising certificate, which would, in turn, suspend the CPD requirements. If a barrister does not suspend his/her practising certificate then two hours per month, of which at least one must be verifiable, must still be undertaken before return to practice. Where a long period of absence is envisaged then it is considered essential for a practitioner to remain up to date and complete CPD as appropriate before practice can be taken up again. The power to grant extensions of time on appropriate terms, or to re-issue a practising certificate subject to conditions about CPD, should cover these cases. The Qualifications Committee has a discretion to decide whether a returning practitioner should make up the whole of the shortfall, or some part of it, and over what period (ie before or after returning), taking into account any amount of CPD which has been undertaken during the period of absence from practice.

### **6.3 Maternity/paternity leave**

If a barrister is going on maternity or paternity leave (including adoption leave) then he/she might wish to consider suspending their practising certificate, which would, in turn, suspend the CPD requirements. If the barrister does not suspend his/her practising certificate (in case some work is planned to be undertaken), then CPD requirements must be met since it is considered essential for a practitioner to remain up to date. As with any break from practice (6.2 above), the required number of hours must be completed by a returning practitioner. The increased flexibility of the system should enable this more easily to be completed.

### **6.4 Part time practice/retirement**

Barristers working part time, if they hold a practising certificate, are subject to the same rules as those working on a full time basis. There is no reduction in hours for this. All practitioners must fulfil the minimum requirements unless the practising certificate is suspended. It follows that barristers who are fully or partly retired, but still working part time, are subject to the same rules. If requirements are not met then this will be a contravention of the Code of Conduct. It is illegal to provide

reserved legal activities without a practising certificate. Any person undertaking work requiring authorisation to practise will need to keep up to date and participate in CPD.

### **6.5 Practising abroad**

Barristers subject to the Code of Conduct who are practising outside England and Wales are, if they hold a practising certificate, subject to the same rules as those practising in England and Wales. If a barrister in this position wishes to maintain his/her practising certificate then the requirements for CPD must be completed and a return submitted in the normal way.

If there is an intention to work outside England and Wales for a specific short term period but with a firm intention to return to work in England and Wales then, as with any other suspension of the practising certificate, an application must be made. Depending on the period of absence a practitioner may need to satisfy any additional requirements (to transfer back from overseas). It is strongly recommended that CPD should be used in order to keep up to date. Recording CPD in a portfolio will help to demonstrate this. It should also be noted that barristers in this situation may be required to be CPD compliant with any other professional body with which registration is necessary in order to practise abroad.

### **6.6 Counselling/non-completion**

If CPD requirements are not completed by the deadline stipulated by the Bar Standards Board, the BSB CPD section must be contacted immediately for advice since the individual's authorisation to practise may be at risk.

### **6.7 Appeals and complaints**

Appeals against judgments concerning non-compliance or sanctions imposed for non compliance with CPD are dealt with by the Complaints Department. The BSB does not deal with complaints about course providers.

**Appendix A – CPD Declaration**



REGULATING BARRISTERS

**CPD Declaration  
1 January – 31 December 2013**

<b>Personal details:</b>
Name: Register number: Address: Telephone: Email:

<b>Statement</b>
<p>I declare that (confirm as appropriate):</p> <ul style="list-style-type: none"> <li>• I have held a practising certificate for all of the calendar year 1 January – 31 December 2013 and have completed a minimum of 12 hours verifiable and a total of 24 hours of CPD during that period <span style="float: right;">yes/no</span></li> <li>• I have held a practising certificate for part of the calendar year 1 January – 31 December 2013 and have completed the requisite number of hours <i>pro rata</i> <span style="float: right;">yes/no</span></li> <li>• The activities undertaken were relevant to my present or proposed area of practice <span style="float: right;">yes/no</span></li> <li>• The activities were sufficient in terms of time, balance and range of activities in order to achieve my personal objectives of keeping my knowledge and skills up to date <span style="float: right;">yes/no</span></li> <li>• No activities have been counted twice or inappropriately <span style="float: right;">yes/no</span></li> <li>• I understand that I am obliged to retain records of CPD undertaken in my CPD Portfolio, for three years from 31 December 2013, and that I may be required to produce such for sampling purposes. <span style="float: right;">yes/no</span></li> <li>• [NPP 3<sup>rd</sup> year only] I have completed the required 9 hours of Advocacy and 3 hours of Ethics training <span style="float: right;">yes/no</span></li> </ul> <p>Or, if you have not completed the CPD requirements for 1 January – 31 December 2013:</p> <ul style="list-style-type: none"> <li>• I did not hold a practising certificate for any of the period 1 January – 31 December 2013...yes/no</li> <li>• I have been granted an extension of time until .....[insert date] <span style="float: right;">yes/no</span></li> <li>• I have applied for an extension of time until .....[insert date] <span style="float: right;">yes/no</span></li> <li>• I completed my CPD hours outside the calendar year 1 January – 31 December <span style="float: right;">yes/no</span></li> </ul>

<b>Signature</b>

<b>Date</b>



## Guidance Notes:

### The Established Practitioners Programme (EPP)

- The programme consists of a minimum of 24 hours CPD per CPD year. 12 hours must be 'verifiable' and 12 hours may be non-verifiable independent learning as specified by the CPD Handbook.
- The CPD year is the same as the calendar year (ie 1 January to 31 December).
- The Bar Council maintains an online list of courses provided by the Inns of Court, Circuits, Specialist Bar Associations and others.
- A barrister who wishes to claim an extension of time for completion of CPD in one calendar year must apply to the BSB, indicating the reason, such as:
  - Career break
  - Illness (short or long term)
  - Maternity/paternity leave.
- There are no waivers to the established practitioners programme for part or all of the year but the practising certificate may be suspended for a given period of time. In such cases the CPD requirement no longer pertains. (NB two CPD hours, at least one of which must be verifiable) must be completed for each month or part month for which a practising certificate is held.

### Submission of the CPD Declaration Form

***This form must be completed and submitted online by 31 March each year, as part of the authorisation process for renewal of the practising certificate. Barristers not complying with minimum requirements will be referred to the Complaints Committee.***

Receipts (other than automatic) will not be issued unless requested.

If you are unable to submit your declaration online then it may be submitted

- by email to [cpdrecords@barstandardsboard.org.uk](mailto:cpdrecords@barstandardsboard.org.uk); or
- in hard copy to the Training Compliance Department, BSB, 289-293 High Holborn, London WC1V 7HZ

Queries and comments may be addressed to the CPD section of the Bar Standards Board (Tel: 0207 611 1444).

**Appendix B – CPD Portfolio**



REGULATING BARRISTERS

**CPD Portfolio**

**1 January – 31 December 2013**

<b>Personal details:</b>
Name: Register number: Address: Telephone: Email:

<b>Reflection and self evaluation (ie short summary regarding whether aims have been achieved, what else needs to be done, and aims and prospective requirements for next year)</b>

<b>Signature</b>

<b>Date</b>

**Verifiable Activities (1 January – 31 December 2013)**

Date	Title of event	Provider or organiser	hours	Reasons for attending or undertaking the event/activity, relevance for practice, and reflection on own learning
Total hours:				

Documentation of verifiable events (e.g. programme, booking confirmation, receipt) must be retained for at least three years since they may be called on for monitoring or sampling purposes by the BSB.

**Non-Verifiable Activities (1 January – 31 December 2013)**

Date	Activity	Where / how undertaken	hours	Reasons for attending or undertaking the event/activity and relevance for practice, and reflection on own learning
Total hours:				

Brief details of non-verifiable events should be recorded so far as possible. Information must be retained for at least three years since it may be called on for monitoring or sampling purposes by the BSB.

## **Appendix C – New Practitioners Programme**

### **Requirements**

Newly qualified barristers are required to complete the New Practitioners Programme (NPP) during their first three years of practice, consisting of 24 hours of CPD each year, of which 12 hours must be verifiable and 12 hours can be non-verifiable (giving a total 72 hours over the first three years of practice). This must include nine hours of Advocacy training and three hours of Ethics training by the end of the first three years of practice, with the balance in a spread of activity in other CPD activities and courses. In addition, a two day course on financial information and accounts (Forensic Accounting course) must be undertaken by the end of the first three years of practice (if not undertaken during pupillage). The NPP compulsory courses are provided by Inns, Circuits and the Crown Prosecution Service and thus varies slightly but all courses must meet the minimum requirements as specified below. It is strongly recommended that the advocacy training requirements are completed as early as possible in the three year period.

### **Forensic Accounting**

The course is currently delivered by BPP on behalf of the BSB. The course is designed to enable new practitioners to manage relevant financial information and accounts. It aims:

- to provide new practitioners with relevant knowledge of financial information and accounts (both corporate and individual) and
- to develop skills in the practical application of such knowledge and information (both corporate and individual)

At the end of this course delegates should:

- know what business, financial and accounting documents are relevant for the purpose of litigation
- have a basic understanding of standard accounting systems, both documentary and computerised
- be able to communicate more effectively with accountants and experts on matters relating to monetary claims
- be more confident in dealing with business, financial and accounting information in practice

Delivery consists of formal lectures and talks with discussion and question and answer sessions involving participants. There is no formal assessment on the course but full attendance at all sessions is required before certification of completion of the course. There is a compulsory e-learning module to be completed prior to the course. If the course and assessment are not satisfactorily completed candidates may be asked to withdraw and book again on a later course.

The two day course consists of a first day covering the compulsory elements of the course (financial statements, profit and cash, legislative requirements of company records, preparation of accounts, case studies and a question and answer session). A tax e-learning module may also be made available and is recommended as helpful. On the second day of the course, different specialist areas are covered as follows: criminal (fraud, money laundering, investigation, insolvency); civil (analysis of loss of profits, valuation, asset tracing and money laundering, investigation and company law); and family (tax - income, capital

and inheritance, money laundering, business variation and pensions splitting). All sessions include topical issues / case studies and question and answer sessions. See <http://www.bppprofessionaldevelopment.com/forensicbar/> for details.

## **Advocacy**

The advocacy training element of the NPP is designed to develop and advance skills appropriate to the demands made on practitioners in the early years of practice. It seeks to:

- provide further training in the practice of advocacy (oral and written) enabling the newly qualified person to operate efficiently and effectively
- enhance the advocacy skills of newly qualified practitioners, to a level that is appropriate to the early years of practice

At the end of this course delegates should have developed advocacy skills to the required standards, specifically in the areas of witness handling; evidence (including expert evidence); opening and closing addresses to bench and/or jury; use of skeleton arguments; appellate advocacy. Any advocacy training intended specifically for criminal or civil practice should be so identified.

Providers of approved advocacy courses (Inns, Circuits) will deliver a mixture of group practical training by approved trainers and instruction (lectures, seminars, master classes or similar). A minimum of nine hours practical small-group advocacy training must be delivered. The basic element shall be delivered in groups of such size as to facilitate the active participation of the trainees and the giving of constructive feedback by the trainer. The Hampel Method of advocacy teaching should be used for as much of this part of the teaching as possible. All those teaching advocacy on the NPP must be approved to train to this level (see <http://www.advocacytrainingcouncil.org/>).

Work and performance of new practitioners is formally assessed. The assessment criteria identified in Dutton 2 (Report on Assessment of Advocacy by the Advocacy Working Party under Timothy Dutton QC, February 2004) provides the standard to which all advocacy should be taught and assessed. Formal assessment of written material (e.g. skeleton arguments) will also take place. Remedial action (and reassessment) will be required if performance is poor. Attendance on the programme must be 100% for all timetabled sessions. The providers may, at their discretion, provide additional hours of instruction through lectures or seminars.

## **Ethics**

The ethics element of the NPP is designed further to instill in practitioners the vital need for the application of ethical principles in (the early years of) practice. The course aims:

- to enable the new practitioner to identify those situations which raise ethical problems
- to understand the principles that govern professional conduct, and
- to apply these principles to given situations.

At the end of this course delegates should have detailed knowledge and understanding of the overriding duty to the court; the duty to act in the client's best interests and duties to third parties.

Providers of approved ethics courses will deliver a mixture of group practical training by approved trainers and instruction (lectures, seminars, master classes or similar). Attendance must be full, for the duration of all timetabled sessions.

Courses should incorporate discussions of the three basic duties in the Code of Conduct: the overriding duty to the court, the duty to act in the client's best interests and duties to third parties. Courses may also deal with aspects relating to client care and the cab-rank rule:

## **1. Overriding duty to the Court**

Duty not to mislead

- Previous convictions
- Experts' reports (esp. in family cases)
- Where client is being economical with facts
- Changes in client's story
- Where court makes mistake of fact/law
- Where client has committed/is likely to commit perjury
- Where witness has committed/is likely to commit perjury
- In drafting witness statements

Duty to assist/not to waste time

- Where client has a barely arguable case
- Where client wishes to put points which are not arguable
- Where client wishes to put irrelevant questions to witness

## **2. Duty to act in client's best interests**

- Duty of confidentiality - can it be overridden?
- Conflicts between lay clients and solicitors
- Conflicts between clients
  - In multi-handed cases etc
  - Acting against a previous client
- Where client disagrees about handling of case
- Where client does not give adequate instructions/does not turn up
- vis à vis Legal Services Commission
- Advice on guilty pleas - especially where client protests innocence
- Negotiating settlements

## **3. Duties to third parties**

- In settlement negotiations when new information comes in
- To witnesses
  - Interviewing
  - Cross-examining
  - Allegations of fraud etc
- To other counsel
  - Criticism of previous counsel
  - But no 'counsel-to-counsel' privilege
- To instructing solicitors

## **4. Client care**

- Prompt, courteous advice

- Giving notice of returns
- Criteria for selecting competing cases
- Behaviour in conferences
- Fee negotiations
- Dealing with complaints from clients courteously and reasonably

#### **5. Cab rank**

- Reasons for refusing/returning cases
- Conflicts of interest
- Where previously acted for other side
- Where a connection with client (e.g. close family)
- Where a witness or involved with a witness
- Not leaving client in the lurch.

#### **Other requirements for new practitioners**

The remaining balance of the New Practitioners Programme (60 hours) must be met through attendance at suitable courses and/or by own learning. Information on CPD courses run by the Inns, the Circuits and the SBAs is provided on the Bar Council website that resulted from the Hirst Report (2009). See: <http://www.barcouncil.org.uk/news/BarCPDCoursesandEvents/>. For further information about each course visit the respective provider's website.



## Appendix D – Frequently Asked Questions (FAQs)

[References are to sections in this Handbook]

### The CPD system

- **To whom do the regulations apply and what are the requirements?**

The regulations apply to all practising barristers. A total of 24 hours must be completed during each CPD year (of which 12 hours must be verifiable and 12 hours can be non-verifiable). [2.3]

- **When will the new system come into force?**

The new system will be applicable from the CPD year 1 January – 31 December 2013. Declarations must be submitted by 31 March each year (from 2014) with the application for your practising certificate. Any issues must normally be resolved before a practising certificate can be issued (by 1 April 2014). [3.1]

- **When will the old system cease?**

The old system (summarised as 12 hours per annum of which 4 must be formally accredited) will cease once the new system is in place (1 January 2013).

- **What is the deadline for submission of annual CPD returns to the BSB?**

CPD must be completed by 31 December each year and returns made to the BSB by 31 March each year (with renewal of the practising certificate). [3.1]

- **Can I carry credits forward into the next calendar year?**

No. If you exceed the number of hours in one CPD year you cannot carry this over into the next CPD year. Hours may not be counted twice in successive years (for example if undertaken in the January – March period). [3.3]

### Difficulties in completion of CPD

- **What should I do if I foresee that I am unlikely to complete my CPD requirements for the year?**

If you are aware that you will not be able to complete your CPD hours in the required time, you must contact the BSB and apply for an extension, stating the reasons. Any outstanding hours must be made up by 31 March of the following year, otherwise your practising certificate may not be renewed. CPD hours completed at the beginning of the following year cannot be double counted (ie hours claimed in the January-March period may not count in both the preceding and following years). [3.3]

- **What happens if I have not completed the minimum requirements?**

If you have not completed your CPD requirements by the deadline stipulated by the Bar Standards Board, you must contact the BSB CPD section immediately since your authorisation to practise may be at risk. [3.3, 3.5]

- **What should I do if I am not going to practise for a certain period?**

If you are taking a career break or having a break in practice for any other reason that will prevent you from completing your CPD requirements (perhaps illness) then you might wish to consider suspending your practising certificate. This would, in turn, suspend your CPD requirements. If you do not suspend your practising certificate then you must complete the CPD requirements. Alternatively, you may wish to apply

for an extension of time to complete the CPD requirements, before you return to practise. Where a long period of absence is envisaged then it is considered essential for a practitioner to remain up to date and appropriate additional hours may need to be completed before practice can be taken up again. [3.4, 6.2]

- **What should I do if I am going on maternity/paternity leave?**

If you are going on maternity leave then you might wish to consider suspending your practising certificate, which would, in turn, suspend your CPD requirements. If you do not suspend your practising certificate then you must complete the CPD requirements (ie two hours per month of which one must be verifiable). It is considered essential for a practitioner to remain up to date and hours may need to be completed before practice can be taken up again. [6.3]

- **I am retired from practice, but undertake work on an occasional basis. Do I need to fulfil the annual CPD requirements?**

Yes. If you do not, you will be contravening the Code of Conduct. It is illegal to provide reserved legal activities without a practising certificate. Any person undertaking work requiring authorisation to practise will need to keep up to date and participate in CPD. [6.4]

- **I only practise part time. Is the number of hours reduced because of this?**

No. All practitioners must fulfil the minimum requirements unless the practising certificate is suspended. [6.4]

- **I practise outside England and Wales. What must I do in order to fulfil the CPD requirements and maintain my practising certificate?**

If you practise fully (or partially) outside England and Wales but want to maintain your practising certificate you must complete all the requirements for CPD and submit your return in the normal way. The new system will increase flexibility and enable those in this situation more easily to fulfil requirements by means of online courses, reading and writing etc. [6.5]

- **I am considering working abroad for a short period of time, but wish eventually to return to work in England/Wales. How should I proceed?**

As with any other reason for suspension of the practising certificate, an application for suspension must be made in advance. However, if you ultimately plan to return, then depending on the period of absence you may need to satisfy any additional requirements (to transfer back from overseas). It is strongly recommended that CPD should be used in order to keep up to date. Recording your CPD in a portfolio will enable you to demonstrate this. It should also be noted that you may be required to be CPD compliant with any foreign professional body with which you register in order to practise abroad. [6.5]

- **I cannot afford the time or the money to attend courses. What should I do?**

In order to keep up to date, it is vital that you manage and complete your CPD each year. You must manage your priorities for the year in order to set aside time and also manage the cost of doing CPD. It is recognized that practitioners may be on a restricted income in their first few years of practice and efforts are made to ensure that there are sufficient courses available at reasonable rates. Many of the SBAs and Circuits offer discounted fees for new practitioners and some external providers may also give discounts on request. Additionally all Chambers can provide CPD courses and many now offer in-house training to their members. Many extremely high quality 'verifiable' courses are provided at little or no cost by Inns, Circuit and SBAs, and non-verifiable activities frequently also have minimal resource implications. [3.5, 6.6]

## **Selection of activities/courses**

- **How do I choose appropriate courses or activities?**

It is for individual practitioners to determine the suitability of courses and activities that they undertake. You will need to consider your personal and professional needs, taking account of your priorities and time and budget available, and your preferred method(s) of learning. It is important for you to plan, undertake and then reflect on what you have learnt and how this will inform your practice (with regular evaluation). Records must be kept and a sample will be scrutinised in terms of suitability for individual practitioners. Details of courses provided by the Inns, Circuits and SBAs are listed in a month by month chart on the Bar Council website. The BSB recognises that not all worthwhile courses and activities will have been notified. [4.1 - 4.4]

- **What activities can be included and does CPD have to be approved by the BSB to be valid?**

Any learning activity that improves your ability to practise law and helps maintain your competence counts as CPD. It does not have to be approved by the BSB. [4.4]

- **Why are there different categories (verifiable and non-verifiable) for CPD?**

The previous system of formal accreditation of courses was considered to be cumbersome and costly. In addition, the individual scrutiny and quality assuring of some 6,000 courses by over 600 providers is logistically extremely difficult. A new system has therefore been developed based on the placing of trust on practitioners and which will allow market forces to determine the range and quality of CPD that is provided and undertaken. More hours are demanded but a far wider range of activities is permitted, some of which are verifiable (by means of evidence and documentation) whilst others, based on trust, are not verifiable. [4.4]

- **How do I decide whether an activity is eligible for non-verifiable CPD hours?**

Activities that are of educational benefit to you personally and contribute to your practice, should be allowable, for example, keeping up to date by reading Law Reports. Short reflective notes should be made in order to record such activity in your CPD Portfolio. Indicative lists, based on current and recent practices and experiences, are provided in section 2 of the Handbook. [2.4, 2.5, 2.6]

- **Are there any mandatory courses required of barristers?**

Given the diversity of practice at the Bar, there are at present no set courses that barristers are required to undertake (other than advocacy training and ethics in the first three years of practice under the NPP). Although the BSB can provide advice, barristers have the responsibility of choosing appropriate professional development activities that contribute to their individual personal or professional development and are relevant to their proposed or present area(s) of practice. [2.7]

- **How should activities be organised over the CPD year?**

You will benefit most from the continuing professional development activities if you plan what training and development you need. A basic method is to: (a) identify skills and knowledge that you already have, (b) consider how you want your practice to develop (in consultation, where appropriate, with your senior clerk, practice manager, Head of Chambers or line manager), (c) identify gaps in your skills and experience

and (d) plan how to address this gap through courses and other CPD activities available. [1.3]

- **Can legal research count towards my CPD hours?**

This can only be included if such activity has an educational value. Research which is part of the normal activity of dealing with a specific case is not included. You can claim non-verifiable hours for private reading and research (including via the internet) if you consider it educational and relevant to your practice (but not a specific case). You should keep notes and reflect on such work undertaken, keeping a note of this in your portfolio. [2.5]

- **What happens if I write a book or article?**

Time spent on writing a legal textbook or article can be verified in the year of publication. Time spent on research and writing prior to the year of publication should count as non-verifiable private study.

- **Should I submit all activities that could be considered as CPD?**

You are encouraged to record your CPD activity as fully as possible, since this aids reflection and learning. However, it is only necessary to include details of the minimum required by the BSB. This is the information which will be used for audit purposes. [3.1]

### **Keeping Records**

- **Why do I need to complete a CPD Declaration each year**

The Declaration form must be completed each year and submitted each year as part of the renewal of your authorisation to practise. [3.1]

- **How do I record my CPD?**

We ask you to record and plan your CPD online using the CPD Portfolio. You will need your registration details to log into this or any other members-only service. [3.1]

- **How does the online record system work?**

Full instructions are provided, incorporated into the system itself. It has been made as user friendly as possible but further comments on ways to improve the system are welcomed. It can be accessed from the website at:  
<http://www.barstandardsboard.org.uk>. [3.1]

- **I am physically unable to use the online system, are hard copies available/acceptable?**

Yes – you should contact the CPD Department and a copy of the form will be provided. [3.1]

- **I attended a meeting but omitted to collect my certificate**

You should request a copy to be forwarded to you. If this is not possible you should otherwise retain relevant documentation or evidence of attendance in the form of lecture notes, handouts or your own notes. This must be kept in your portfolio, otherwise the activity may not be allowed as verifiable (ie if it cannot be verified). [2.4]

### **Monitoring Compliance**

- **How will the Bar Standards Board monitor compliance?**

The CPD Declaration must be completed and submitted on line by the end of March following the CPD (calendar) year in question, as part of the system for renewal of the practising certificate. The Portfolio, with more detailed information, must also be retained by practitioners, in the form of certificates, course details, notes, or reflective notes for non-verifiable work. The Bar Standards Board will audit a percentage of established (EPP) practitioners programme records each year. If your record is selected for audit you may be asked to provide detailed evidence of activities undertaken. Using electronic records, a 10% sample of returns will be inspected (related to the present size of the Bar), that may identify a number of returns that require further discussion with the barrister. Of the remainder, a further 10% will also be scrutinised in detail each year. Sanctions and penalties will be instigated against those who are found not adequately to comply. [5.2]

- **What is the procedure for checking compliance?**

If we do choose you, we will write to you or email you privately. We check that you have carried out the minimum CPD needed for the year. We will also offer feedback and advice if needed. [5.2]

- **What happens if I am chosen in the sample for monitoring and do not cooperate?**

If you refuse to take part, warning(s) will be issued after which sanctions will be applied, ranging from monetary fines to non-renewal or withdrawal of your practising certificate. It is preferable for dialogue, discussion and co-operation to take place in order for requirements to be fulfilled. [5.2]

- **Is CPD monitored for Chambers and organisations or for individuals?**

At present only records of individual members are monitored but consideration of collective records of members of Chambers may come under consideration and/or scrutiny as part of chambers monitoring (or possibly as part of Entity regulation in the future). [5.5]

- **What happens if I do not complete the minimum requirements?**

If you do not complete the minimum number of hours of continuing professional development, you may be referred to the Professional Conduct Committee. Penalties may be imposed for failure to comply with the CPD requirements (under para. 901.1 of the Code of Conduct), on a strict liability basis and without any further warning. [5.3]

## Appendix E - Useful contacts and addresses

### Bar Standards Board - 289-293 High Holborn, London WC1V 7HZ (0207 611 1444)

Chair of the BSB	Baroness Ruth Deech
Director of the BSB	Dr Vanessa Davies
Chair, Education & Training Committee	Dr John Carrier (to December 2011)
Chair, CPD Sub Committee	Patrick Goodall
Head of Education Standards	Dr Valerie Shrimplin
Continuing Education Officer	Elizabeth Prats ( <a href="mailto:cpd@barstandardsboard.org.uk">cpd@barstandardsboard.org.uk</a> )
Continuing Education Assistant	Ruth Swinden ( <a href="mailto:rswinden@barstandardsboard.org.uk">rswinden@barstandardsboard.org.uk</a> )
Manager, Qualifications Regulations	Joanne Dixon ( <a href="mailto:jdixon@barstandardsboard.org.uk">jdixon@barstandardsboard.org.uk</a> )
Training Regulations (external, reductions)	Pauline Smith ( <a href="mailto:psmith@barstandardsboard.org.uk">psmith@barstandardsboard.org.uk</a> )
Training Compliance Assistant	Rachel Reeves ( <a href="mailto:rreeves@barstandardsboard.org.uk">rreeves@barstandardsboard.org.uk</a> )

### Inns of Court

Gray's Inn	<a href="http://www.graysinn.org.uk">www.graysinn.org.uk</a>
Inner Temple	<a href="http://www.innertemple.org.uk">www.innertemple.org.uk</a>
Lincoln's Inn	<a href="http://www.lincolnsinn.org.uk">www.lincolnsinn.org.uk</a>
Middle Temple	<a href="http://www.middletemple.org.uk">www.middletemple.org.uk</a>

### Circuits

South Eastern Circuit	<a href="http://www.southeastcircuit.org.uk">www.southeastcircuit.org.uk</a>
Midland Circuit	<a href="http://www.midlandcircuit.co.uk">www.midlandcircuit.co.uk</a>
Northern Circuit	<a href="http://www.northerncircuit.org.uk">www.northerncircuit.org.uk</a>
North Eastern Circuit	<a href="http://www.northeasterncircuit.co.uk">www.northeasterncircuit.co.uk</a>
Western Circuit	<a href="http://www.westerncircuit.org.uk">www.westerncircuit.org.uk</a>
Wales and Chester Circuit	<a href="http://www.walesandchestercircuit.org.uk/">www.walesandchestercircuit.org.uk/</a>

### Specialist Bar Associations and others

Administrative Law Bar Association	<a href="http://www.adminlaw.org.uk">www.adminlaw.org.uk</a>
Association of Women Barristers	<a href="http://www.womenbarristers.co.uk">www.womenbarristers.co.uk</a>
Bar Association for Commerce, Finance & Industry	<a href="http://www.bacfi.org/">www.bacfi.org/</a>
Bar Association for Local Government & Public Service	<a href="http://www.balgps.org.uk/">www.balgps.org.uk/</a>
Bar European Group	<a href="http://www.bareuropeangroup.org.uk">www.bareuropeangroup.org.uk</a>
Bar Lesbian and Gay Group	<a href="http://www.blagg.org">www.blagg.org</a>
Bar Mutual Indemnity Fund	<a href="http://www.barmutual.co.uk">www.barmutual.co.uk</a>
Chancery Bar Association	<a href="http://www.chba.org.uk">www.chba.org.uk</a>
Commercial Bar Association	<a href="http://www.combar.com">www.combar.com</a>
Criminal Bar Association	<a href="http://www.criminalbar.com">www.criminalbar.com</a>
Employment Law Bar Association	<a href="http://www.elba.org.uk">www.elba.org.uk</a>
Family Law Bar Association	<a href="http://www.flba.co.uk">www.flba.co.uk</a>
Free Representation Unit (FRU)	<a href="http://www.freerepresentationunit.org.uk">www.freerepresentationunit.org.uk</a>
Intellectual Property Bar Association	<a href="http://www.ipba.co.uk">www.ipba.co.uk</a>
Law Centres Federation	<a href="http://www.lawcentres.org.uk">www.lawcentres.org.uk</a>
London Common Law & Commercial Bar Association	<a href="http://www.lclcba.com">www.lclcba.com</a>
Midland Chancery & Commercial Bar Association	<a href="http://www.barcouncil.org.uk">www.barcouncil.org.uk</a>
Northern Chancery Bar Association	<a href="http://www.nchba.co.uk">www.nchba.co.uk</a>
Northern Circuit Commercial Bar Association	<a href="http://www.nccba.org.uk">www.nccba.org.uk</a>
Parliamentary Bar Mess	<a href="http://www.barcouncil.org.uk">www.barcouncil.org.uk</a>
Personal Injuries Bar Association	<a href="http://www.piba.org.uk">www.piba.org.uk</a>
Planning & Environmental Bar Association	<a href="http://www.peba.info">www.peba.info</a>
Professional Negligence Bar Association	<a href="http://www.pnba.co.uk">www.pnba.co.uk</a>
Property Bar Association	<a href="http://www.propertybar.org.uk">www.propertybar.org.uk</a>
Revenue Bar Association	<a href="http://www.revenue-bar.org">www.revenue-bar.org</a>
Society of Asian Lawyers	<a href="http://www.societyofasianlawyers.com">www.societyofasianlawyers.com</a>

Society of Black Lawyers  
Technology and Construction Bar Association  
Western Chancery & Commercial Bar Association

[www.blacklawyer.org](http://www.blacklawyer.org)  
[www.tecbar.org](http://www.tecbar.org)  
[www.barcouncil.o](http://www.barcouncil.o)

Appendix C Summary sheet of the proposed new model ('CPD At a Glance')



# BAR STANDARDS BOARD

REGULATING BARRISTERS

## **Continuing Professional Development for Barristers**

### **CPD Requirements**

The Code of Conduct §202 currently provides that a barrister may practise as a barrister as long as '(b) he has complied with any applicable requirements of the Continuing Professional Development Regulations'.

CPD is also required of barristers by the Legal Services Act 2007, and the regulatory objective of '*encouraging an independent, strong, diverse and effective legal profession*' (section 1(1)(f)).

### **Definition and purpose of CPD**

CPD for practising barristers is defined as: 'any activity undertaken by a barrister which is relevant to the barrister's areas or proposed areas of practice but is not part of the barrister's normal professional commitments which will:

- develop or improve the barrister's knowledge of the subject-matter of his or her practice or proposed practice and develop to a high standard the skills required to conduct that practice
- keep the barrister up to date with new knowledge and skills relevant to that practice
- give clients and the public confidence that the barrister is skilled in the areas of practice in which his or her services are required
- create by participation in organised CPD events a collegiate ethos at the Bar which will contribute to the advancement of knowledge, skill and good practice within the profession.'

### **Hours required per annum of practising barristers**

- All practising barristers are required to complete a minimum of 24 CPD hours each CPD year.
- The CPD year is the same as the calendar year (ie 1 January – 31 December).
- 12 hours must be 'verifiable' and 12 hours may be 'non-verifiable'
- All practitioners are required to demonstrate a balance of CPD activities undertaken.

### **CPD AT A GLANCE**

*[proposed system, from January 2013]*

## **Verifiable and non-verifiable CPD**

See overleaf for indicative lists of what may count as verifiable or non-verifiable, and what is not allowed at all.

## **Extensions**

A barrister who wishes to seek an extension from the established practitioners programme for part or all of the year must apply to the BSB, indicating the reason, such as:

- career break
- illness (short or long term)
- maternity/paternity leave

**Note:** two CPD hours (at least one of which must be verifiable) must be completed for each month (or part) for which a practising certificate is held.

## **Waivers**

There are no waivers to the established practitioners programme for part or all of the year, but the practising certificate may be suspended for a period of time. During the period of suspension the CPD requirement no longer applies.

Where the practising certificate has been suspended, then the requisite number of CPD hours must normally be made up before the practising certificate is resumed. Applications for waivers or reductions may be considered.

## **The CPD Declaration**

A Declaration stating that the minimum number of CPD hours (which must include the minimum number of verifiable hours) have been undertaken each year must be completed and submitted by 31 March each year. This forms part of the authorisation process for renewal of the practising certificate.

## **The CPD Portfolio**

In addition to the Declaration, barristers must retain their own records of the CPD undertaken, using the Portfolio. Portfolios with evidence of the CPD undertaken will be sampled by the BSB to ensure compliance with the requirements.

## **Activities which will count as verifiable:**

### **Participation in courses etc.**

- Attending a professional course, lecture, seminar, conference or similar event.

- Attending a university course.
- Participating in an online course.

#### **Judicial etc. training and work shadowing**

- Training as a judge, recorder, tribunal member or chairman, arbitrator or mediator.
- Attending an organised scheme shadowing anyone exercising the above functions.
- Acting as a judge's marshal.
- Acting as a judicial assistant.

#### **Development of personal and practical skills**

- Attending an advocacy training course.
- Attending a course for the development of any other relevant personal and/or practice management skills.
- Equality and diversity training.

#### **Teaching**

- Delivering a lecture or training session on any of the above.
- Preparing a lecture or training session on any of the above (capped at twice the length of the lecture).
- Teaching on a pupils or new practitioners course at an Inn, on Circuit or for a Specialist Bar Association.
- Teaching on a university law course.
- Acting as a member of a court or tribunal at a moot, mock trial or similar event.
- Undertaking training as a pupil supervisor.

#### **Legal writing**

- Publishing a book or article. The writing of a legal textbook or article can be verified in the year of publication. Time spent on research and writing prior to the year of publication should count as non-verifiable private study.

#### **Activities which will count as non-verifiable:**

##### **Private study**

- Reading by way of private study law reports, statutes, legal journals or similar materials otherwise than for the purpose of publication or providing legal services to a particular client.
- Viewing or listening to relevant broadcasts having a professional legal content.

**19 May 2011**

#### **Activities which will not count**

- Supervising pupils.
- Sitting in any judicial capacity.
- Sitting as a chairman or member of a tribunal, or as an arbitrator.
- Acting as a mediator.
- Teaching students below the level of an undergraduate degree.

- Unofficial networking activities such as running a personal website, blog, legal commentary or online diary.
- Participating in personal career development events or similar activities, such as learning interview- or CV-writing techniques.
- Giving careers talks.
- Participating in marketing events.
- General networking by attendance or speaking at dinners and other social occasions, book launches, tours, receptions, court visits or general meetings.
- Serving on any committee or working party.

### **Courses and Activities**

The BSB no longer accredits courses for the purpose of CPD. Suitable courses are available through the Bar Council, Inns of Court, Circuits and Specialist Bar Associations as well as a wide range of commercial providers. It is up to practitioners to determine their needs and attend / undertake suitable courses and activities as appropriate. The Bar Council maintains an online list of courses provided by the Inns of Court, Circuits, Specialist Bar Associations and others. Information is available on the website at <http://www.barcouncil.org.uk/news/BarCPDCoursesandEvents/>.

### **Requirements for New Practitioners**

New Practitioners are required to undertake 24 hours of CPD each year within the first three years of practice, of which at least 12 hours must be verifiable. This must include 9 hours of approved Advocacy training and 3 hours of approved Ethics training during the first three years. These are verifiable.

Full details are published in the CPD Handbook available on the BSB website, from the BSB, 289-293 High Holborn, London WC1V 7HZ or from [cpdrecords@barstandardsboard.org.uk](mailto:cpdrecords@barstandardsboard.org.uk)

## Appendix D Equality Impact Assessment

## FULL EQUALITY IMPACT ASSESSMENT FORM

### Continuing Professional Development: New model proposed following the CPD Review, May 2011

<b>Date of Assessment</b>	<b>April 2011</b>
<b>Assessor Name &amp; Job Title</b>	Valerie Shrimplin, Head of Education Standards BSB Liz Prats, CPD Officer BSB Ruth Swinden, CPD Administrator BSB
<b>Policy to be Assessed</b>	The new model for CPD requirements for practising barristers, as proposed following the BSB Major Review of CPD (January 2010 – May 2011)
<b>Aim/ Purpose of Policy</b>	The overarching aim of the new model is to ensure that barristers providing reserved legal services undertake the necessary Continuing Professional Development in order to develop and improve their knowledge, skills and competencies, keep them up to date with current knowledge and techniques and thereby provide the public in general and clients in particular with confidence that practitioners are skilled in the areas of practice in which their services are required.

#### OVERVIEW OF POLICY

In comparison with the existing system, which required practitioners to undertake 12 hours of CPD per year (of which 4 hours had to be on BSB accredited courses), the new system proposes an increase in the number of hours required (to 24 hours per year). More detailed records will need to be kept by practitioners as well, as greater reliance is placed on practitioners to ensure individually that their CPD is appropriate and relevant to their own current and/or future practice.

Alongside the increase in hours, a wider range of activities will be permitted (see annex to this document). Activities are proposed to be categorised as 'verifiable' (ie attendance at an event, publication of a book/article etc) or 'non-verifiable' (ie research and reading). This is in contrast to the former approach of accreditation of courses which (with some 600 providers or around 6,000 courses each year) has become impractical. Nor was the accreditation process a guarantee of the appropriateness of an individual's training nor indeed of its quality.

The scheme for new practitioners (of up to three years' practice) is similarly increased to 24 hours per year but remains fundamentally similar in terms of compulsory courses being provided by the Inns, and which involve liaison with the BSB. Oversight of these by the BSB will be focussed at this stage.

A more secure link between a self declaration of completion of CPD by Barristers and the issuing/renewal of a practising certificate can only help to protect both clients and the public at large.

## **POLICY ANALYSIS**

### Positive impact

The increased flexibility of the new system is partly designed to assist those who may have, in the past, found it difficult to access suitable course, and especially for those who take a break from full time practice for any reason.

For example, those who take a break from practice for reasons of illness or maternity leave will need to maintain their competence (if they still have a practising certificate) or to update themselves prior to return to practise (if they have suspended their practice). The allowance of broader categories of appropriate training will make it easier for such persons to maintain their knowledge and expertise. Extensions will be allowed, to make flexible the time required for completion in special cases such as these – but no full waivers will be allowed since it is vital for any practising barrister to be competent and up-to-date, in the public interest.

In addition, the flexibility of the new system would make it easier for sole practitioners, those in smaller organisations or chambers, and those out of London or even abroad (all often BME) to meet requirements.

### Negative impact

The main negative impact identified is that no waivers will be permitted to those not practising for a period of time. This would affect similar categories of persons, such as those who are not practising for any reason, such as illness or maternity. Although it may be argued that exemptions or waivers should be allowed in such circumstances, there is a strong argument that those who have a break from practice are in even greater need of keeping their skills and knowledge up-to-date, in the public interest. Of course if such a person does not practise at all, then the practising certificate need not be maintained and so the CPD requirements would not pertain. Some catching up would need to be carried out before (or soon after) return to practise, details being confirmed by the Qualifications Committee. The primary concern would be the protection of clients and the Rule of Law.

An additional possible negative impact that has been identified is the potential additional "cost" of the increase from 12 to 24 hours, since this may require practitioners to undertake and hence pay for more courses. Even though there is greater flexibility in the new system, there may be a small risk that some practitioners (particularly lower earners, eg sole practitioners and/or those with caring roles may find the increase a burden. This may at least be a perception, if not a reality.

<p><b>Positive impact on equality and evidence of this</b></p>	<p><b>Race</b></p> <p>The policy would be applied to all alike and would therefore have no particular impact on any racial group. In fact, the increased flexibility could make it easier for them to meet the requirements. Sole practitioners, small chambers and Out of London Chambers (often having a higher proportion of BME members) would benefit from the increased flexibility.</p>
	<p><b>Gender</b></p> <p>The increased flexibility of the proposed system should make it easier for those on maternity leave or with child care (or other caring responsibilities) to complete their CPD requirements</p>
	<p><b>Disability</b></p> <p>The increased flexibility of the proposed system should make it easier for those with disabilities to complete their CPD requirements.</p>

<p><b>Negative impact on equality posed by this policy and any evidence of this</b></p>	<p><b>Race</b></p> <p>No adverse effect on particular racial groups has been identified. The policy would apply to all alike.</p> <p>The additional cost of the extra hours may impact on those with more limited means such as sole practitioners, who are often, but not exclusively of BME origin. The increased flexibility will however counterbalance any such effect.</p>
	<p><b>Gender</b></p> <p>The policy of not permitting waivers for those who continue to provide reserved legal services could possibly be argued as having a disproportionate effect on women barristers, due to maternity leave and because they often bear the brunt of child care or other forms of caring). However, those who are practising must ensure their knowledge and skills are current, in the public interest. The option remains to suspend the practising certificate in such circumstances.</p> <p>The additional cost of the extra hours may impact on those with limited income and time available such as those with caring roles, who are often, but not exclusively, female. The increased flexibility will however counterbalance any such effect.</p>



	<p><b>Disability</b> No adverse effect on those with disabilities has been identified.</p>
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**Action Plan**

Action required to reduce/remove barrier	Person Responsible	Deadline
<p>The new system must be subject to further consultation and, if approved, will be well advertised and carefully monitored after it is put in place.</p>	<p>Elizabeth Prats</p> <p>Statistical information will be gathered to monitor the effects of the new model, if and when it has been put in place (target date: 2013).</p> <p>The number of special cases that arise will be carefully monitored.</p>	<p>ongoing</p>

2<sup>nd</sup> draft 28 April 2011

## **Annex A – activities that will be able to count/not count**

Activities which will count as verifiable:

Participation in courses etc.

- Attending a professional course, lecture, seminar, conference or similar event.
- Attending a university course.
- Participating in an online course.

Judicial etc. training and work shadowing

- Training as a judge, recorder, tribunal member or chairman, arbitrator or mediator.
- Attending an organised scheme shadowing anyone exercising the above functions.
- Acting as a judge's marshal.
- Acting as a Judicial Assistant.

Development of personal and practical skills

- Attending an advocacy training course.
- Attending a course for the development of any other relevant personal and/or practice management skills.
- Equality and diversity training.

Teaching

- Delivering a lecture or training session on any of the above.
- Preparing a lecture or training session on any of the above (capped at twice the length of the lecture).
- Teaching on a pupils or new practitioners course at an Inn, on Circuit or for a Specialist Bar Association.
- Teaching on a university law course.
- Acting as a member of a court or tribunal at a moot, mock trial or similar event.
- Undertaking training as a pupil supervisor.

Legal writing

- Publishing a book or article.

Activities which will count as non-verifiable:

- Private study
- Reading by way of private study law reports, statutes, legal journals or similar materials otherwise than for the purpose of publication or providing legal services to a particular client.
- Viewing or listening to relevant broadcasts having a professional legal content.

Activities which will not count

- Supervising pupils.
- Sitting in any judicial capacity.
- Sitting as a chairman or member of a tribunal, or as an arbitrator.

- Acting as a mediator.
- Teaching students below the level of an undergraduate degree.
- Unofficial networking activities such as running a personal website, blog, legal commentary or online diary.
- Participating in personal career development events or similar activities, such as learning interview- or CV-writing techniques.
- Giving careers talks.
- Participating in marketing events.
- General networking by attendance or speaking at dinners and other social occasions, book launches, tours, receptions, court visits or general meetings.
- Serving on any committee or working party.

Appendix E List of Consultees to whom the consultation paper has been sent

## **LIST OF CONSULTEES**

### **BAR STANDARDS BOARD COMMITTEES**

Complaints Committee  
Education and Training Committee  
Qualifications Committee  
Quality Assurance Committee

### **BAR ORGANISATIONS**

Bar Council  
Training for the Bar Committee  
Professional Practice Committee  
Remuneration Committee  
Legal Services Committee  
Employed Barristers' Committee  
Young Barristers' Committee  
International Relations Committee  
European Committee  
Equality and Diversity Committee  
Circuits  
All Specialist Bar Associations  
Heads of Chambers  
Inns of Court

### **OTHER BODIES**

Legal Ombudsman  
Law Society  
Solicitors Regulation Authority  
Institute of Barristers Clerks  
Legal Practice Management Association  
Institute of Legal Executives  
Council for Licensed Conveyancers  
Chartered Institute of Patent Agents  
Institute of Trade Mark Attorneys  
Institute of Paralegals  
Intellectual Property Regulation Board  
Ministry of Justice  
Attorney General  
Solicitor General  
Crown Prosecution Service  
Legal Services Commission  
Office of Fair Trading  
Which?  
Consumer Focus  
National Association of Citizens Advice Bureaux  
Lord Chief Justice  
Master of the Rolls  
President of the Queen's Bench Division  
President of the Family Division  
Chancellor of the High Court