



**Bar Standards Board CPD Evaluation Project**

**Draft Final Report**

**Version 2**

*David Mort and Jemma Macfadyen*

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## Executive summary

At the start of 2019, the Bar Standards Board (BSB) commissioned IRN Research to undertake independent research to explore barristers' perceptions and experiences of the new Continuing Professional Development (CPD) scheme for barristers on the Established Practitioners' Programme (EPP). The aim of the research is to enable the BSB to develop an understanding of the effectiveness of the new CPD scheme and whether or not it is meeting its aim of supporting the competence of barristers.

### Context

Barristers are required to undertake CPD to maintain professional standards and develop relevant knowledge and skills. Following the Legal Education and Training Review (LETR) in 2013 the BSB made a commitment to review and overhaul the EPP CPD requirements. On 1<sup>st</sup> January 2017 a new more risk-based and outcomes focussed scheme was introduced.

Under the new scheme, EPP barristers must plan their learning objectives at the start of the year according to their individual development needs and area(s) of practice. They must record activities throughout the year, and then reflect on what they have learned at the year end, including how they have met their learning objectives and what their objectives should be for the future. Alongside planning, recording and reflection, the fourth element of the new scheme is reporting, i.e. where barristers declare to the BSB annually that they have completed their CPD.

The new rules aim to enable greater individual responsibility in deciding the amount and type of CPD barristers should undertake and provide choice from a wider range of CPD activities. There is no longer a set number of hours of CPD which a barrister must do each year, and CPD (and organisations who deliver CPD activities) is no longer accredited.

While the new scheme offers a more flexible and less prescriptive CPD environment which should fit the needs of each individual barrister it is a major change from the previous system. There is the potential for variations in both the understanding of the new scheme and the way individual barristers cope with the new system and consequently the value it provides in maintaining and improving standards.

In 2018, the BSB ran a spot check of a sample of CPD records from 707 barristers on the EPP scheme. Almost 90 per cent of those spot checked were considered compliant, or compliant with some feedback from the BSB. This research is the second phase of the evaluation following the spot check exercise.

### Overview of report

Following the Executive Summary, this report presents and analyses the results from various research components:

- A literature review researching CPD trends in the legal services sector and other professional services sectors.

- A focus group conducted at the start of the research with seven barristers participating. The aim was to elicit feedback on the new CPD scheme to help the research team scope and design subsequent research stages.
- In February 2019 a workshop was held at the BSB involving interested stakeholders. The workshop discussed the literature review and the focus group results then two break-out sessions considered potential themes to be included in the online survey and the telephone interviews. Discussions were confidential so the details are excluded from this report.
- From April to end-May 2019, an online survey obtained responses from 566 barristers. The aim of the online survey was to gather feedback from a representative sample of barristers on the EPP scheme, regarding their perceptions and experiences of the new scheme.
- In-depth telephone interviews were completed with 30 barristers to explore some of the themes emerging from the online survey. Those completing the online survey were asked if they would be willing to take part in a telephone interview. In particular, barristers outside London were included as well as barristers in different practice areas, employed barristers, and some individuals with a practice management role in chambers.
- In July/August 2019, small discussion groups were held with chambers personnel in Birmingham and London. The aim was to gather feedback on the role of Chambers Directors, Practice Managers, Clerks and any other staff in the CPD process. Seven individuals participated in two conference calls.

## Key findings

The results of the online survey and telephone interviews highlight a number of themes and these are described below (results from the focus group and chambers discussions are also given where relevant):

- Use of the guidance and information about the new scheme on the BSB website has been high and considered useful by most barristers. The BSB website has been the only information source used by a majority. The next most important channel for advice and guidance on the scheme has been other barristers - used by almost half of online survey respondents - while chambers managers and clerks were used by almost a third of respondents.
- All the specific sources of advice and guidance used were found to be useful by a majority with BSB Roadshows top of the list in terms of usefulness.
- The new scheme has expanded the range of activities that can now count as CPD and this flexibility of CPD choices is welcomed by many barristers. Also, responses in the telephone interviews from a small number of barristers working in very specialist areas note that the new system works much better for them: under the previous scheme they had to take part in general CPD activities which were often irrelevant but made up the hours, but the flexibility of the new scheme means that they can find CPD activities that fit their

specialist areas.

- The flexibility in the new scheme, and wider range of CPD content, appear to have started to have some impact on barristers' CPD decisions. External events at physical locations, such as courses, seminars and conferences, are still the most popular activities but fewer individuals are turning to these activities in the new scheme compared to the old scheme. Individual reading and research is being used by more individuals under the new scheme compared to the old, and there has been a small increase in the use of podcasts, webinars, and social media.
- Increasingly, CPD activities are covering areas such as stress management and wellbeing training, diversity and equality, ethics, and practice management issues, areas that were not covered in the old CPD scheme. This is important as the BSB's Professional Statement confirms that barristers should be cognisant of equality and diversity issues, and good management practice for example.
- Online survey results show that the two main factors important when considering a CPD activity are the subject matter of an activity and an individual's learning needs. The interview results emphasise that planning learning and development by most barristers is driven by new case work and keeping on top of case law.
- The requirements of the new CPD scheme state that barristers should prepare a written CPD plan setting out their learning objectives and the activities they propose to undertake during the year. Only just over half of online survey respondents understand what this means exactly and the initial focus group also highlighted some confusion here with participants disagreeing on how specific these plans need to be and whether they can be changed during the year. The telephone interview results expand on this with most interviewees agreeing that planning is a useful exercise, but many find it difficult to plan at the start of the year as CPD requirements change during the year, with new cases and new legislation coming along.
- The other element of the new CPD scheme that is clearly causing some confusion is reflection, with less than half of online survey respondents stating that they understand what is required here and this re-enforces a view expressed in the focus group. Over half of those interviewed understand the value of reflection, while some were less clear. However, although many see the value of reflection, as something that many barristers do all the time, there are concerns about having to write these reflections down for the regulator, and how to write these reflections down.
- Most have a clear understanding about the recording and reporting elements of the new scheme but the paperwork involved in completing the four elements of the scheme is creating a sense of too much administrative work to meet the requirements of the scheme.

- Despite the above concerns about some elements of the new scheme, a clear majority from the online survey agree that the CPD activities are effective in developing knowledge, keeping up to date with developments in a practice area, and addressing any knowledge or skills gap. In addition, most interviewees agree that the new scheme is relevant to the way they practise.
- A majority in the online survey and everyone in the telephone interview survey agree that the CPD contributed to the overall sense of competence.
- Most telephone interviewees see CPD as important for personal and professional development in order to offer the best service to clients. Career development and compliance are seen as less important.
- The overwhelming majority of responses have come from barristers in chambers but the smaller number of replies received from employed barristers suggest that this group has been able to deal with the administrative changes in the new scheme better than those in chambers. Most employed barristers are positive about the new scheme as the CPD timetable dovetails with their annual business review and strategy development processes.
- Overall, the evaluation suggests that, although a small minority of barristers would prefer to return to the old system, a majority like the flexibility of the new scheme and the range of CPD choices and content that can now be included as CPD. Criticisms of the new scheme are focused on the administrative burden on individual barristers associated with completing the paperwork requirements for the scheme.

# 1. Introduction

## 1.1 About the Bar Standards Board

The Bar Standards Board (BSB) was established in January 2006 in order to separate the regulatory and representative functions from the Bar Council. As the independent regulatory body, the BSB is responsible for regulating barristers called to the Bar in England and Wales and other specialist legal business in the public interest.

The BSB is responsible for:

- Setting the education and training requirements for becoming a barrister;
- Setting continuing training requirements to ensure that barristers' skills are maintained throughout their careers;
- Setting standards of conduct for barristers;
- Authorising organisations that focus on advocacy, litigation, and specialist legal advice;
- Monitoring the service provided by barristers and the organisations they authorise to assure quality;
- Handling complaints against barristers and the organisations they authorise and taking disciplinary or other action where appropriate.

The BSB is required to be a risk-based, transparent and proportionate regulator, targeting their work at the areas of most need in relation to their regulatory objectives<sup>1</sup>. The BSB Handbook sets out the regulatory framework and includes the Code of Conduct, Scope of Practice and Authorisation and Licensing Rules, Bar Qualification Rules, Enforcement Regulations, and essential guidance.

## 1.2 Background to the research

To make sure that barristers maintain professional standards and develop relevant knowledge and skills, they are required to undertake continuing professional development (CPD). In the BSB Handbook and CPD guidance, CPD is defined as 'work undertaken over and above the normal commitments of a barrister with a view to developing the barrister's skills, knowledge and professional standards in areas relevant to their present or proposed area of practice in order to keep the barrister up to date and maintain the highest standards of professional practice.'

The BSB's regulatory framework for CPD is an important way in which the public are assured that barristers are competent, up to date and maintain high standards

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<sup>1</sup> See Legal Services Act 2007 s1 and s28(3) and BSB [Risk Outlook](#), [Index](#) and [Framework](#).



of work. All practising members of the Bar are subject to the CPD regulations set out in the BSB Handbook.

Mandatory CPD for barristers came into force in 1997 and operated largely unchanged until 2017. The previous requirement was that following the first three years of practice after pupillage (known as the New Practitioners' Programme or NPP), a barrister had to complete the Established Practitioners' Programme (EPP) every year. The EPP required barristers to complete 12 hours of CPD between 1 January and 31 December, of which four hours had to be accredited by the BSB. The scheme was prescriptive in nature, with a list of prohibited activities that did not count towards the hours of CPD required.

Following the Legal Education and Training Review (LETR, 2013<sup>2</sup>) the BSB made a commitment to review and overhaul the EPP CPD requirements with a scheme that was more risk-based and outcomes-focused. In 2016, the Legal Services Board (LSB) approved new CPD rules and the new scheme came into force on 1 January 2017. The aims of the new approach are to have the BSB regulate CPD with a risk-based, outcomes focused approach, rather than a purely prescriptive approach as in the previous scheme.

Since 1 January 2017, under the new scheme, EPP barristers must plan their learning objectives at the beginning of the year according to their individual development needs and area(s) of practice. They must record their activities throughout the year, and then reflect on what they have learned at the end of the year, including how they have met their learning objectives and what their objectives should be for the future. Specifically, those on the EPP must:

- a. prepare a written CPD Plan setting out their learning objectives and the types of CPD activities they propose to undertake during the calendar year
- b. keep a written record of the CPD activities they have undertaken in the calendar year
- c. keep a written record in the CPD Plan for each calendar year of:
  - i. their reflection on the CPD they have undertaken;
  - ii. any variation in their planned CPD activities; and
  - iii. their assessment of their future learning objectives.
- d. retain a record of the CPD Plan and completed CPD activities for three years.
- e. submit to the BSB an annual declaration of completion of CPD in the form specified by the BSB.

The new rules for those on the EPP aim to enable greater individual responsibility in deciding the amount and type of CPD they should undertake and provide choice from a wider range of CPD activities. There is no longer a set number of hours of CPD which a barrister must do each year, and CPD (and organisations who deliver

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<sup>2</sup> <http://www.lettr.org.uk/wp-content/uploads/LETR-Report.pdf>

CPD activities) is no longer accredited. In addition, a number of activities which were not counted under the old scheme now count as CPD – both types of learning activities (e.g. informal learning, drafting) and subject areas (e.g. Equality and Diversity, practice management, staff management).

In this way, the new regime aims to be less prescriptive, more flexible and more suited to a barrister's actual training needs, making it less likely for irrelevant CPD activities to be undertaken and less likely for there to be disproportionate supervision and enforcement action as a result of non-compliance.

While the new scheme offers a more flexible CPD environment which should fit the needs of each individual barrister it is a major change from the previous system that had operated virtually unchanged for almost 20 years, and barristers have had to adapt to this new system quickly. As individual barristers have to make decisions on their own CPD needs and then record and monitor the results there is the potential for variations in both the understanding of the new scheme and the way individual barristers cope with the new system.

In June 2018, the BSB started a spot check of a sample of CPD records from barristers on the EPP scheme. A sample of 707 barristers were contacted via email and asked to submit their CPD record for 2017. Just under 90% of those who were spot checked by the regulator were considered compliant, or compliant with some feedback from the BSB. Full details of the spot check are included in a report<sup>3</sup>. As the second phase of their evaluation of the new scheme after the spot check, the BSB commissioned IRN Research to undertake independent research to explore barristers' perceptions and experiences of the new scheme.

The aim of the research is to enable the BSB to develop an understanding of the effectiveness of the new scheme and whether or not it is meeting its aim of supporting the competence of barristers.

## 2. Methodology

### 2.1 Design of the study

A mixed methods research approach was adopted to allow for a large group of barristers to be surveyed via a largely quantitative data collection exercise (online survey), and to supplement this with a qualitative survey programme including in-depth telephone interviews, a focus group, and group discussions with specific chambers staff, eg practice managers.

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<sup>3</sup> . <https://www.barstandardsboard.org.uk/media-centre/press-releases-and-news/high-levels-of-compliance-amongst-barristers-with-new-cpd-scheme/>

Also included in the research programme was a literature review and a workshop with interested stakeholders held at the BSB.

### **Literature Review**

The first stage of the research was a literature review, and the first version of this was completed in February 2019. As the project progressed additional sources were added to produce an updated version of the literature review in July 2019.

At the start of the project, the aim was to enable the refinement of the Research Aims, Research Questions, and the Key Concepts to be employed in the research. The literature review synthesizes existing research, theories, concepts, frameworks and policy and provides a critical evaluation of the materials covered by the review.

The focus for the literature review is on CPD schemes operated in selected professional sectors with a regulatory framework. The sources covered by the literature review are:

- General research and insight sources on CPD trends and policies in professional services sectors.
- Sources focusing on CPD trends, changes and policies in the legal services sector in the UK, plus any international sources
- Sources relating to other specific sectors, e.g. financial services.

### **Focus Group**

A focus group was held on the 18 February 2019 with seven barristers taking part. The aim of the group was to elicit feedback on the new CPD scheme which would help the research team to scope and design further research stages, i.e. the online survey and some in-depth telephone interviews.

Themes discussed in the group included: general feedback on the new CPD system; examples of an individual's CPD activity in the new and old schemes; views on the CPD annual process and specific elements; and the role of CPD to support professional development and careers.

### **BSB Workshop**

On the 27 February 2019 a workshop was held at the BSB to consider responses to the initial findings and help shape the research questions going forward. participants included:

- Four members of the IRN Research project team
- Nine staff members from the BSB
- A representative from The Law Society
- A representative from Justice

The workshop discussed the literature review and the responses from the focus group in a general session. In this session, Edwina McQueen, a CPD consultant co-opted onto the IRN Research team provided insights into the changing trends in

CPD schemes and activities across the professions. Two break-out sessions then considered the potential themes to be included in the online survey and the telephone interviews.

### Online Survey

The aim of the online survey was to gather feedback from a representative sample of barristers on the EPP scheme, regarding their perceptions and experiences of the new scheme.

All questions were agreed with the BSB and the survey was tested internally and with a small group of five barristers. An email invite was sent by the BSB to a sample of barristers on their database in April 2019 and two more invites were circulated in May 2019. No personal information was held on the database used for the mailings: certain data was provided to IRN Research by the BSB, eg practice status, years of call etc in an anonymous format and survey responses were linked to this data via an anonymised identifier in the email. The process was completely automated using survey software.

Responses were obtained from 566 barristers and data on the sample profile from the survey and a comparison with the EPP whole population is given in Table 1.

Overall, the survey responses are a good representation of the EPP whole population but male barristers and BAME barristers are slightly under-represented in the survey. A higher percentage of public access barristers responded to the survey compared to the EPP whole population.

**Table 1: Comparison of Survey Sample with EPP Whole Population**

	Survey Sample	EPP Population
<b>Date of call</b>		
15+ years	76%	70%
10-15 years	15%	16%
5-10 years	9%	13%
Less than 5 years	-	1%
<b>Gender</b>		
Female	41%	36%
Male	58%	64%
Prefer not to say	1%	-
<b>Ethnicity</b>		
White	84%	75%
Other Ethnicity	16%	25%
<b>Status</b>		
Self-employed	83%	80%
Employed	15%	18%
Dual	2%	2%
<b>Public Access Registered</b>		
Yes	49%	39%
No	51%	61%
<b>Main Practice Area</b>		
Crime	21%	28%
Commercial & Financial	12%	10%
Family	10%	15%

Chancery Contentious	9%	4%
Public Law	5%	5%
Employment	3%	4%
<b>Region</b>		
London	69%	61%
South East	5%	5%
W Midlands	6%	4%
North West	6%	9%
South West	5%	4%
All Other Regions	9%	17%

*Source: IRN Online Survey/BSB Database*

## Telephone Interviews

In-depth telephone interviews were completed with individuals to explore some of the themes emerging from the online survey. Those completing the online survey were asked if they would be willing to take part in a telephone interview and 147 agreed. Purposive sampling, which focusses on particular characteristics or groups that are of interest rather than aiming for a representative sampling, was used. In particular, the aims were to: include barristers outside London, as they were not involved in the focus group; to cover barristers in different practice areas and work environments; to try and interview some individuals with a practice management role in chambers.

## Chambers Discussion Groups

In July/August 2019, the final research stage involved small discussion groups with chambers personnel. These groups were held in conference calls and the aim was to gather some feedback on the role of Chambers Directors, Practice Managers, Clerks and any other support staff in the CPD process.

## 2.2 Confidentiality issues

The responses from all participants taking part in the evaluation are completely confidential and anonymous. Where selected comments from the interviews are included in the report any text that might identify a participant has been removed.

Recorded transcripts from the focus group, telephone interviews, and chambers discussions are destroyed once the data has been analysed and written up.

## 2.3 Limitations

The use of an online survey enables a relatively large population sample to be contacted quickly at relatively low cost but the key disadvantages of an online survey are that response rates can be low, questions can be misunderstood by the respondent, and it is difficult to ask too many in-depth questions via this method. In this instance the response rate was satisfactory and there is no evidence that any questions were misunderstood. The telephone interview programme, focus group, and discussion group enabled more in-depth questions to be asked.

Another disadvantage of an online survey is that respondents may not be representative of the population as a whole, either in terms of the profile of the

sample or in terms of the views of the respondents. Male barristers and barristers from a BAME background were slightly under-represented in the survey responses.

The overwhelming majority of barristers are based in London and work in chambers and this is reflected in the online survey responses. The in-depth interviews included a number of interviewees from outside London and also some employed barristers in the public and private sectors.

## **3. Research findings**

### **3.1 Literature Review**

#### **Introduction**

The sector focus for the literature review has primarily been on CPD schemes operated in selected professional sectors with a regulatory framework.

The sources covered by the literature review are:

- Sources focusing on CPD trends, changes and policies in the legal services sector in the UK, plus any international sources
- General research and insight sources on CPD trends and policies in professional services sectors.
- Sources relating to some other regulated sectors, eg financial services, healthcare.

Changes in CPD schemes in legal services sectors have followed on from the Legal Education and Training Review (LETR) which reported its findings in 2013. The LETR provides a detailed historical literature review up to 2013 and the literature review for this project only covers sources from 2013 onwards.

The individual sources covered by the literature review are listed and described in Annex A. This section provides a summary and analysis of the review.

#### **Key points**

- Academic research has developed new learning theories and models centred around learning outcomes, reflection, and the impact of learning on practice. A growing number of regulatory bodies and professional associations have replaced hours-based input CPD models with outcomes-based models, using the concepts identified in the academic research (reflection in particular) but most of these new CPD schemes have been launched relatively recently, i.e. within the last two or three years.
- The development of most of these new schemes has followed a similar pattern: a period of consultation before a scheme is launched; scheme launch with some guidance and support on how the scheme works; and the introduction of a regular (usually annual) random audit of a sample of scheme participants to check for compliance with the new scheme.

- So far, there is limited evidence of any research to explore the effectiveness or impact of these new schemes or to consider user perceptions or evaluation of the schemes. In July 2019, the SRA reported on a survey of around 500 solicitors considering the impact of their new CPD scheme and the feedback was generally positive.

### **Legal Services**

- Nearly all the legal regulatory bodies in England and Wales have adopted outcomes-based CPD schemes in some way following the LETR. The exception is the Intellectual Property Regulation Board (IPReg) which still has an hours-based scheme. In Northern Ireland and Scotland, there are still hours-based CPD schemes in place for solicitors and barristers (known as advocates in Scotland).
- Other key recommendations of the LETR that have been introduced in most CPD schemes in England and Wales are the inclusion of informal learning, more emphasis on individual planning of CPD for the year, and a focus on reflection on the outcomes of CPD.
- Annual audits of a sample of those undertaking CPD are now in place in most regulatory bodies in the legal services sector although audit samples vary.
- Recommendations from LETR that have still to be addressed in full are the introduction of tougher sanctions for those failing to comply with the new CPD regulations; and that online systems are created by regulators for the submission of CPD plans and logs.
- Across the UK, there is no consistent model for CPD in legal services and there appears to have been no cooperation between the various regulatory bodies as they have developed their individual schemes, although the LSB has an overall oversight role in approving the rules of the individual regulators. Even in England and Wales where outcomes-based schemes are now the preferred approach, there are still differences across schemes. For example, the Council of Licensed Conveyancers, while moving to an outcomes-based approach, has kept the requirement to undertake a certain number of hours. Some schemes still prescribe certain types of CPD activities, for example CPD linked to operational risk.
- The LETR suggested that CPD schemes may continue to recommend minimum hours, but this should not be obligatory. Research cited in this review shows that whilst CPD measurement and assessment has been switching from inputs to outputs, there is a trend towards a mix of both in a number of schemes.

### **General Research**

- The sources listed in the review confirm that most professional and regulatory bodies are moving towards, or have introduced, outcomes-based CPD

policies where the individual is responsible for his/her CPD planning, and then recording, reporting, and reflecting on these activities.

- Most outcomes-based schemes are in their early stages. This means that most schemes have introduced annual compliance audits but research on the effectiveness of the schemes, or user feedback on the new schemes, is extremely limited.
- In particular, a significant number of these schemes - over three quarters - include a requirement for participants to offer some evidence of reflection on their CPD activities.
- Reflective practice is growing in use as a method for professional development, because it enhances critical thinking, deepens self-awareness and improves communication skills. Reflection is used in most, if not all new CPD and work-based learning schemes. Reflection is a critical part of the everyday learning experience as it transforms these experiences into insights and practical strategies for personal and organisational growth. For this reason, reflective practice is considered hugely significant in professional adult learning.
- However, research also notes that reflection, as a formal activity which requires a written statement, is relatively new to most professionals and causing some confusion as to what is required. This is perhaps not surprising given that specialists in professional adult learning are also debating what reflection actually is and how it should be defined.
- From the limited user-based research undertaken, one problem seems to be that, as many of these outcomes-based schemes are relatively new, operators of the schemes and participants are not yet on the same page when it comes to clarifying what is required during the planning and reflection stages in particular. Also, time constraints and work pressures are making it difficult for some to devote enough time to preparing a CPD plan and offering reflection.
- Some research suggests a significant increase in online CPD activity, both in the CPD itself and the recording and reporting of CPD. LETR recommends an online system for the submission of plans and logs, where this is feasible and not already present. There is e-learning evidence to show that online social communities drive behaviour change, through the sharing of best practice. In most cases it is cost effective and provides real time trackable and auditable evidence, both for the system user and the administrator of the system. This is a gap in most CPD schemes in the legal services sector that, if addressed, is likely to lead to improved engagement by users.
- There is a consensus that measuring learning outputs and impacts from CPD activities is difficult, and even where possible it is expensive to resource on a regular basis. This poses a challenge as to how the value and effectiveness of outcomes-based schemes can be measured adequately.



- In the wider training environment, conceptual models such as the Kirkpatrick Model have been used (mainly in the private sector) to try and develop a framework to assess the impact of training (including CPD in some cases) on business performance and an individual's job. The Kirkpatrick model is the most well-known and it is designed to objectively measure the effectiveness of training and education through four levels of evaluation: Reaction – participant satisfaction with training; Learning – participant understanding of training; Behaviour – participant utilization of training; Results – impact of training on business/organizational performance. In practice, the measures used are still not precise enough to provide reliable results while the resources required to run the model are prohibitive for many. The result is the growth of many new CPD schemes which have been developed with little user research and evaluation.

### Research Considerations

- The literature review shows that across the professions, and in the regulated sectors, outcomes-based CPD schemes are still relatively new and most operators have focused on establishing the scheme, setting up procedures for participants, and starting to create regular audits. So far, user research and evaluation of any of these new schemes is very limited: the 2019 research by the BSB and the SRA are recent examples. In general, there has been no comprehensive user research either before schemes were introduced or after implementation.
- Based on the limited research that has been done so far, along with some case studies and anecdotal comments, specific question themes which are likely to be particularly relevant for this research are:
  - Understanding of, and perceived usefulness, of specific stages in the CPD process, ie planning, recording, reflection, reporting.
  - In particular, reflection – do participants understand what this is, the value of it, and how to address it in their CPD plan?
  - The role of informal learning and formal learning and user understanding of these options.
  - The role of online logging and reporting of CPD, can online systems help participants engage more, and are there opportunities to use online systems?
  - The importance or otherwise of the work environment, and any support/advice expected from managers, colleagues.
  - Perceptions of CPD as a career development tool.

## 3.2 Focus Group

### Introduction

Seven barristers participated in a focus group in London on 18 February 2019. The main aim of the group was to elicit feedback on the new CPD scheme which would help the research team to scope and design further research stages, ie the online survey and some in-depth telephone interviews

The profile of group participants was as follows:

Practice area	Years of experience	Position
Civil work	5-9	Tenant
Corporate work	10-14	Tenant
Corporate work, IP, arbitration	20-24	Sole practitioner
Criminal law	5-9	Tenant
Criminal law	5-9	Tenant
Family law	15-19	Tenant
Property and tenant law	25+	Private practice

The key themes emerging from the group are detailed below:

## Key points

### Introduction

- The group participants included barristers working in a range of practice areas, and with different levels of experience but, with one or two exceptions, there were hardly any differences in feedback based on practice area or level of experience. Where there are differences these are highlighted below;
- In a session lasting just over 1.5 hours, negative opinions regarding the new scheme clearly outweighed the positive opinions.

### Understanding of changes

- Everyone seemed to understand the general changes that had been introduced, ie no longer hours-based, a wider choice of CPD, and requirements for self-planning, reflection and reporting;
- While everyone was clear about the general changes, there was less clarity regarding specific elements. For example, the planning time scale, and how to reflect.

### Selected comments:

*“Two years ago you had to hit 12 hours, 4 recognised. Now we plan in the first 3 months of the year, do the work, and reflect on what we do. Chambers told us we had up to 3 months to plan”.*

*“To be honest I don’t really understand the new system – at least I knew what I had to do in the old system. It has been replaced with the fear that I am going to cock something up. I am doing what I always did so if I do cock up I can beg for clemency”.*

*“It is now about being more focused on planning at the start of the year and choosing from a wider range of CPD options although I am now not always sure what counts*

*as CPD. And I plan in the first month of the year – you (referring to another participant) mentioned we had 3 months to plan...are you sure”?*

*“I am still doing the same types of CPD as before but spending more time on planning, reporting and reflection. I have never been particularly sure about the timings – I am not sure about the 3 months - I try and do the planning in the first month”.*

*“The new system offers more choice on CPD, no hours, but too much admin for me”.  
How can you plan in a month at the start and then things change in the year and your plan goes out the window”.*

*“I know the range of CPD options is wider but I still go to the same options. There are probably differences in different practice areas. Me and people like me in commercial law can finish off their CPD requirement in first 3 months. There are lots of conferences I go to and speak at. Especially with arbitration there are lots of courses to choose and a lot IT-related as well. I have a responsibility for IT. Colleagues in criminal and family side have more issues to deal with, and I suspect less flexibility in terms of when they can take a course”.*

*“It’s true – if a court case runs over which they do often, or I am catching up on a case, then CPD slips down the list of things or I end up missing a course”.*

#### **Use of, and availability of, guidance on the new scheme**

- Some had looked at the BSB guidance at the start of the scheme but hardly anyone had looked at this since then. While checking the guidance more frequently might have helped to answer the questions about specific elements noted above, participants said that they did not have time, or just asked their Chambers Manager or others in chambers instead.

#### **Selected comments:**

*“I looked at the guidance at the start of the new system but not since then. There are some strange terms in there that have escaped from university education.  
Reflection... not sure what to make of it”.*

*“I have just been following what I did before in terms of updating and reporting so I can’t remember using the guidance or tools”.*

*“I had a quick glance at the guidance at the start but I do not keep revisiting it. I haven’t got the time and I spend far too much time on administration and paperwork related to the new system anyway”.*

*“Same, I looked at it at the start and maybe once since. I would have liked more face-to-face contact with BSB at the start. I appreciate this is difficult and time consuming but it would have been good. I had some advice as well from the Criminal Bar Association”.*

*“I know I said I had some confusion regarding part of the CPD scheme and I could have gone to the website to find out more, it just takes more time and it’s easier to ask in Chambers”.*

### **CPD activities undertaken**

- Everyone agreed that the most positive aspect of the new CPD scheme was the range of options that can now count as CPD. Those in criminal law, family law, and civil work had started to explore more informal learning options.
- Despite a wider range now available, those in corporate law and planning law were still using mainly formal CPD approaches, e.g. courses and events.

### **Selected comments:**

*“I am still doing a lot of same things – For example, I go to Dubai and give financial advice for one and half days a year to the financial services authority. I have been doing this for a few years and under the old system it gave me loads of points. One thing I could say the new system has encouraged is that I engage more in Chambers with others, give and take advice and so on but is this career development work”?*

*“For the last few years I have been doing lots of international conferences, both attending and speaking at, and I had to check if still compliant in new systems and they are. My CPD activity is covered for the year by these”.*

*“It is similar for me, I still attend a few university-based courses, symposiums (under Chatham House rules). So very similar to the previous CPD. I am also on a couple of Bar Council panels which I can add”.*

*“I think it has changed what I thought counted – things like speaking at conferences, attended in-house training at Chambers, and subscribing to things like Crimeline, and Public Law Bulletin. Whereas before most of those would not have counted they do now and means I have covered what I need to do earlier in year. If speaking at a conference you could only log one a year but the new system now allows flexibility”.*

*“Me too, I am partly changing my way of doing CPD, with not as many courses and I can read more or watch a video”.*

### **Planning and reflection**

- As already mentioned, planning and reflection created the most confusion amongst participants. Concerns over planning focussed on the difficulty of planning at the start of the year and keeping to the plan.
- Concerns over reflection, in particular, ranged from confusion over what it means and what a barrister has to do to reflect, to questioning why it is necessary.

**Selected comments:**Planning

*“If I am in court my plans get cancelled. If this happens, initial planning and then revisiting the plan is a duplication of work. If your trial overruns by 2 weeks then your plan goes out of the window and you have to plan again. There is also a financial problem if you miss a course. I suppose I have started to look at more informal options to stop rewriting, course cancellations”.*

*“I am not sure you have to make your plan at the start that specific. Is it that specific? Do you have to put certain events or courses in the plan? I didn’t think you did. The way I draft my plans is a lot more generalised and I have copied and pasted from their guidance”.*

*“But if it is too general isn’t it a waste of time”?*

*“No I am not saying that you always have to be specific about certain courses but you still should have an idea in your head about what you want to do. One example which was annoying for me was a bar conference on mental health that I wanted to attend. It was 8 hours worth but then I couldn’t go and had to think of something else”.*

Reflection

*“As far as I know, there is no meaningful definition of what reflection is, or what it is trying to achieve”. Am I doing it right? I have no idea”.*

*“I am struggling and scraping around to think of something to say regarding reflection. It takes me ages to write just a few sentences and I am making up what my aims and achievements have been”.*

*“I have this idea of the bureaucratic mind-set and I try and write something that appeals to that mind-set”.*

*“You have either met or not met your targets. I don’t get how reflecting on whether you have succeeded helps. You just say - next year I will try harder”.*

*“After talking to my chambers, it seems that reflection is also an opportunity to change the plan. I was surprised but for some what they achieved didn’t really suit the plan so they changed the plan at the end. So two plans – the plan you initially intended and now a new plan”.*

**Positive and negative elements of the new scheme**

- When asked to highlight positive aspects of the new scheme, the only aspect mentioned by more than one participant was the range of options for what now counts as CPD.

**Selected comments:**

*“There is more common sense about what counts so that is a fundamental improvement”.*

*“Yes, but that improvement is not related to changing the whole way of doing CPD. You could have made simple changes to the old system to achieve the same as broadening what counts as CPD”.*

*“I do like the fact that we can now choose from a wider range. Agree with both of you really”!*

*“I think the BSB has tried to make it less rigid and this is a good thing. I still follow a similar way of choosing my CPD so it works OK for me”.*

- However, there was negativity across the group (apart from one participant) relating to
  - the amount of administrative work needed to complete the CPD log, records, and reporting requirements and
  - the need to offer reflection;
- Two or three mentioned that rigidity in the system had switched from the content of CPD, i.e. what you can do, to the system administration.

**Selected comments:**

*“My problem is that there is no conclusion. I would quite like to finish my year and have achieved what I set out to do. I go to the Chambers Manager and, like me, he is not sure what BSB wanted or what is expected in the submission. At least with a 12 hours system, we knew what was required”.*

*“The new system has its faults, especially the admin work required, but the positive move away from rigidity is good”.*

*“I still come back to the point that any system where we are not certain of its effects is pointless”.*

*“At least you knew where you were with the old CPD: a specific numbers of hours and accredited”.*

*“Part of the administrative problem for me is that you are so unsure about what you are doing and I agonise over it before I write up at the end of the year. The amount of paper at the end is probably only 2 pages but I have spent a long time trying to decide what to say”.*

*“We have a huge amount of administrative burden anyway - tax, VAT - and this is an extra emotional burden”.*

## Other comments and overall views

- There was little support for the idea that CPD can help career development in the longer term. Most saw it as a way to show compliance;
- A discussion of the comparisons between the old and new schemes turned to a debate about whether number of hours should be introduced into the new scheme. There was some support for this.

### Selected comments:

*“It’s not about professional development. It’s about compliance and demonstrating compliance. We should be going back to first principles. What I am saying is that we are each responsible for our professional competence – that should be a given – and if we have to keep up-to-date then we are capable of doing that ourselves without the need for all this monitoring”.*

*“If it can be used to explore non-law areas, like how to manage or how to read accounts, then I think it can be seen to be helping my professional development and where I need to strengthen my knowledge for future roles. Otherwise it is just part of a mix of things and not clear if it helps or not”.*

*“I agree with the point made earlier that the system seems to let you retro-fit your plan so it becomes a charade. Talking to others in Chambers this seems to be what many others do. They just re-write the plan or tweak it at the end to fit what they did”.*

*“I don’t think we should be doing CPD, or at the very least we shouldn’t have a system. The BSB should appreciate that it is in a barrister’s own interest to do CPD so we don’t get sued. Like you said, it is to satisfy outsiders. I learn more from doing my job”.*

*“I don’t think we should drop CPD altogether – there are areas where I think it can really be useful. For example, if CPD is about managing junior employees then this would help me”.*

## 3.3 Online Survey

### Introduction

In Spring 2019 566 barristers completed a questionnaire on their CPD activities under the new CPD scheme. There were three waves of email invites sent to the BSB database of contacts inviting barristers to complete the survey.

This section provides an analysis of the survey results. Annex C details the survey questions asked.

### Key points

The key themes emerging from the online survey and analysed in more detail in this section are:

- A clear majority have used the BSB's website for information and guidance about the scheme, and found this content useful. No other information source has been used by a majority but almost half have asked other barristers and colleagues for information and advice;
- All the sources used for information and guidance were considered useful by a large majority using them: specific sources ranked the highest – highlighted as useful by over 80% of respondents - for usefulness were BSB Roadshows, SBAs, and chambers managers/clerks;
- Understanding of the new scheme is mixed with fewer than half understanding the reflection element, and only just over half have a clear understanding of the planning and reporting elements;
- The two factors seen as most important when considering a CPD activity are the subject matter of an activity and an individual's learning needs;
- External courses, seminars, workshops, and conferences at a physical location are used by fewer individuals in the new scheme compared to the old scheme but individual reading and research has become more important. Some digital content has also become slightly more important notably podcasts, blogs and other social media but use of online courses and seminars has dipped slightly under the new scheme;
- There are a number of elements of the new CPD requirements that many barristers do not find easy to complete. A clear majority of barristers find the simpler tasks easier, i.e. submitting an annual declaration and keeping a written record. However, only a minority find the other elements easy, i.e. planning CPD activities, implementing a CPD plan, and reflection;
- The main issue identified with planning CPD activities at the start of the year was that this is unrealistic as CPD requirements can change throughout the year depending particularly on new case work and new case law appearing. These factors also make implementing the plan difficult;
- Half of all barristers responding stated that they have found it difficult to meet the requirements of the new scheme compared to the old scheme. It is seen as slightly more difficult by 26 per cent and much more difficult by 24 per cent;
- Survey results show that most barristers have yet to be convinced of the usefulness of the various elements of the new CPD scheme. Only just under a quarter of respondents felt that the reflection element was useful; and,
- While there are concerns about some elements of the new CPD scheme, a clear majority agree that the CPD activities are effective in developing knowledge and keeping up to date with developments in a practice area. A majority also agree that the CPD activities have been effective in addressing any knowledge or skills gap and meeting the competencies for professional practice.

### **Sources of Information and Guidance**

The overwhelming majority of barristers – 86 per cent - have used the BSB's website to find information and guidance on the new CPD scheme, and this channel has been used by almost twice as many barristers as the next most popular source of information.

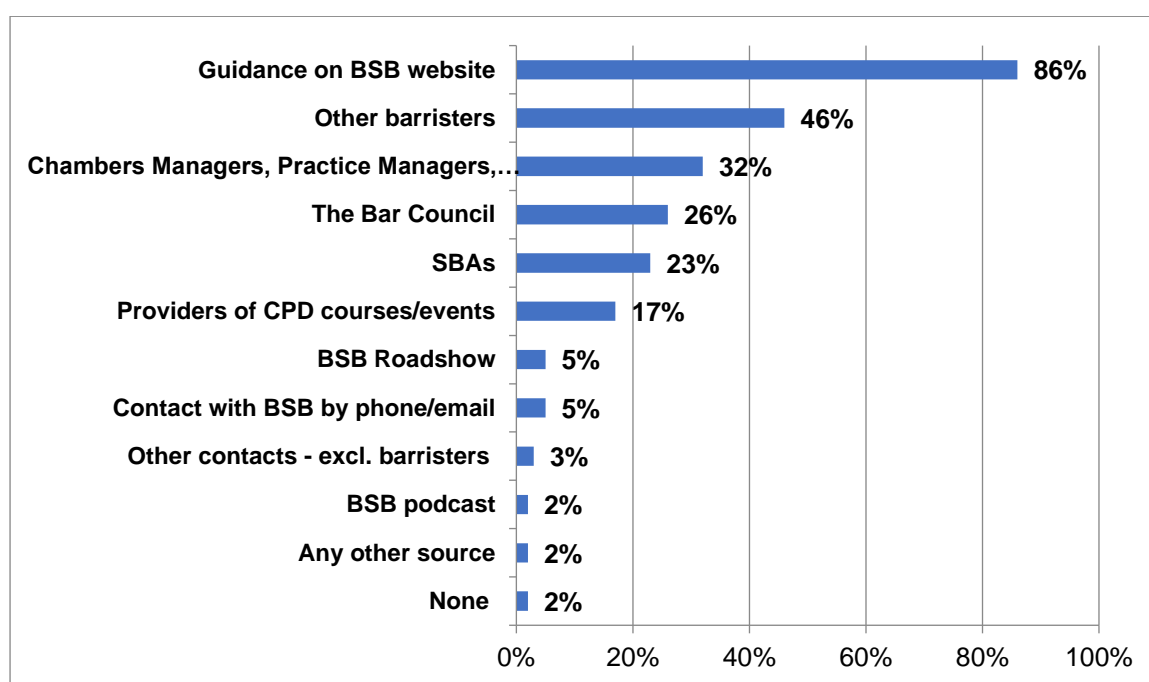


No other source has been used by a majority of barristers. The next most popular sources were other barristers (used by almost half of all respondents – 46 per cent) followed by Chambers Managers, Practice Managers, and Clerks – (32 per cent).

Around a quarter have used the Bar Council – 26 per cent - and the specialist bar associations (SBAs) – 23 per cent.

Other BSB sources used are the BSB Roadshows and contact with the BSB by telephone or email – both at 5 per cent - and a few using the BSB podcast (2%).

**Figure 2: Sources of Information and Guidance**



Source: IRN Research Online Survey of Participants in BSB EPP CPD Scheme, 2019

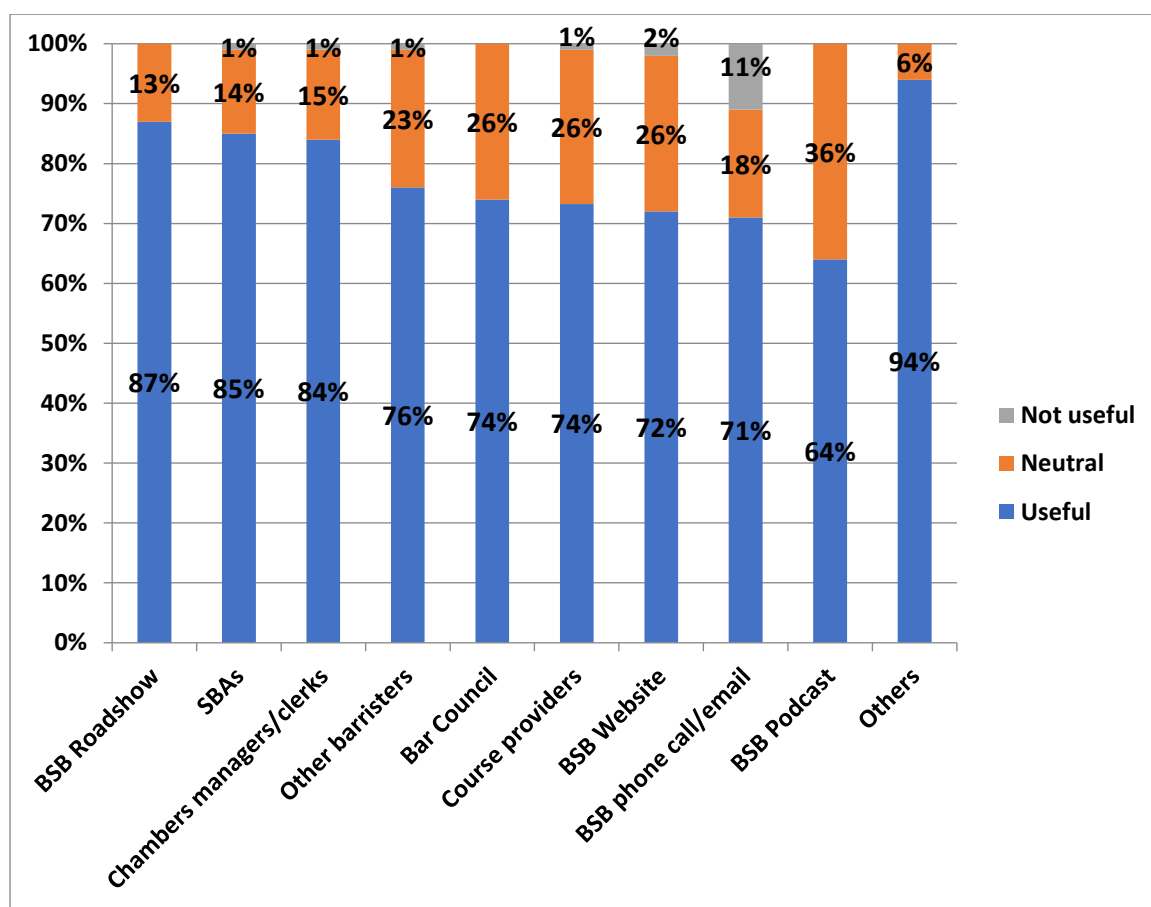
Just 2 percent (11 individuals) highlighted any other sources used and the only specific source mentioned by more than one person was the *Counsel Magazine* used by three individuals.

Almost three-quarters of those using the BSB website for information and guidance found the content useful – 72 per cent - and only 2 per cent said that it was not useful.

A clear majority found all the sources useful but the highest percentages were for:

- BSB Roadshow – 87 per cent (based on 28 replies)
- SBAs – 85 per cent (based on 130 replies)
- Chambers managers/practice managers, clerks – 84 per cent (based on 181 replies)

**Figure 3: Usefulness of Information and Guidance**



Source: IRN Research Online Survey of Participants in BSB EPP CPD Scheme, 2019

There were 46 respondents offering various suggestions for improvements to the information and guidance available. No suggestion mentioned by more than a handful of respondents, but the main suggestions were:

- Send regular emails and reminders about CPD requirements
- Case studies of good practice/practical examples of learning objectives
- Greater clarity on what is required overall
- More guidance on the planning document specifically

**Selected comments:**

*“Possibly a once a year email, just recapping what the main focus of the new system is, and reminding barristers that they need to bear CPD in mind throughout the course of the year”.*

*“Some case studies from actual examples of good practice would be helpful (rather than the original training examples provided) now that the scheme has been in place for a while”.*

*“The provision of examples of learning objectives covering a variety of areas of law and which might be of more relevance to those who have practised in the same area for many years”.*

*“More templates and practical examples of learning objectives in each of the core areas”.*

*“It is not clear what level of detail should be provided in the forward planning documents. It would be useful for this to be explained”.*

*“Guidance should explain how CPD plans and related documents should be prepared by those who wish to maintain their knowledge and skills, rather than to develop into new practice areas or undertake new types of practising. The existing BSB guidance is deficient in only seeking to assist those with the latter objectives”.*

*“Providing templates to be adopted for professional plans and a group of FAQs providing examples of activities and initiatives that would be appropriate for CPD”.*

### **Understanding of the New CPD Scheme**

Survey results suggest that understanding of the new CPD scheme has room for improvement. Almost seven out of 10 barristers (68%) understand the recording element of the new scheme well, but only just over half understand the planning and reporting elements well (54% and 53% respectively).

Less than half of barristers responding (46%) say that they understand reflection well.

There are 15 per cent that admit that they have a poor understanding of reflection while another 40 per cent give a neutral answer.

Many of those that are unclear about the planning phase concerned that they cannot prepare a realistic plan at the start of the year. The comments supporting the quantitative answers to the question suggest that it is less about misunderstanding what is required at the planning stage and is more about the difficulty of completing a realistic plan early in the year.

#### **Selected comments:**

*“It is very difficult to plan for a year ahead when you don’t know what courses will be available”.*

*“The concept is a vague and arbitrary one, which does not relate to the exigencies of practice”.*

*“Setting specific learning objectives is artificial when I really just need to keep current with legal developments”.*

*“The planning requirement is too artificial, because it fails to allow the opportunity to adapt”.*

*“It is difficult to plan in December when you do not know what courses will be offered in the year”.*

*“It’s not clear how much detail should be recorded and sometimes needs can evolve in the year”.*

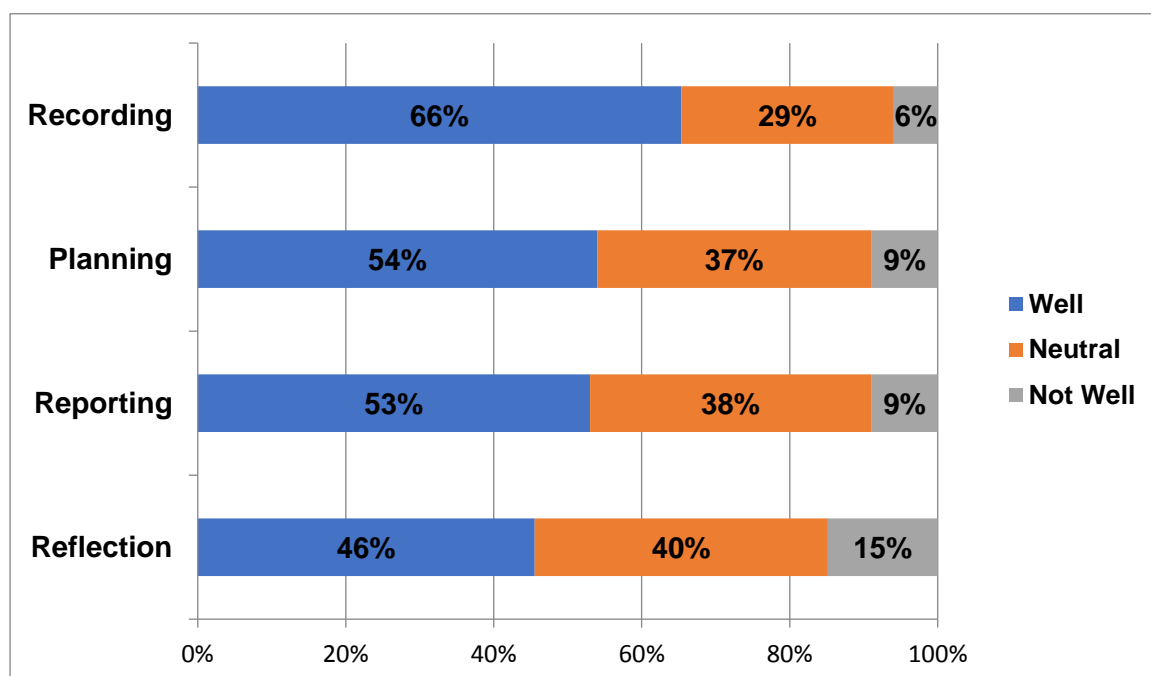
Comments on the reflection phase highlight three main themes: there are respondents that don’t know what to write to reflect; there are others that say they reflect all the time and it does not need to be written down; some see this element of

the scheme as time consuming and unnecessary.

**Selected comments:**

- “I am not sure what needs to be done and how I record my reflections”.*
- “Reflection is something that you do all the time as it is the essential pre-cursor to planning”!*
- “I do not see that the reflection has any useful purpose in practical terms”.*
- “It seems pointless, given that most of the CPD activities involve continuing knowledge development”.*
- “It can seem artificial and unrealistic. What am I attempting to achieve with the reflection”?*
- “I find the self-assessment of whether or not learning goals have been achieved elusive”.*
- “It is hard to know what level of 'reflection' is required to meet what is required”.*
- “Also reflection is automatic and doesn't need spelling out. Waste of time”.*
- “All professional development is useful but I find it hard to put into words”.*
- “Most barristers don't have time for this. We know what we need, we don't need to reflect”.*

**Figure 4: Understanding of Elements of New CPD Scheme**



Source: IRN Research Online Survey of Participants in BSB EPP CPD Scheme, 2019

## Important Factors When Making Decisions on CPD Activities

Two factors are identified by more than 90 per cent of respondents as important when making a decision on which CPD activities to undertake: the subject matter of any course, seminar, or conference, and the individual learning needs of the barrister.

The location and dates of courses, seminars, and conferences are also important to around three-quarters of all respondents.

Recommendations from chambers and employers are much less important as sources of recommendations on CPD activities, according to the survey results.

**Table 5: Importance of Selected Factors when Deciding on CPD Activities**

	Important	Neutral	Not Important
<b>Subject matter of course/seminar/conference</b>	93%	5%	2%
<b>My individual learning needs</b>	92%	6%	2%
<b>Dates of course/seminar/conference</b>	76%	19%	5%
<b>Location of course/seminar/conference</b>	75%	21%	4%
<b>What time available to undertake CPD</b>	51%	36%	15%
<b>What my chambers/employers recommend</b>	45%	37%	18%
<b>Previous use of CPD activities from a specific provider</b>	37%	43%	24%
<b>What my colleagues and peers recommend</b>	25%	63%	22%

*Source: IRN Research Online Survey of Participants in BSB EPP CPD Scheme, 2019*

A supplementary question asked if any other factors were important and 69 individuals said yes. The main other factors cited were:

- Cost of CPD activity – noted by 14 respondents.
- CPD activities driven by practice area needs/work needs – noted by 14 respondents
- Convenience/ability to fit around work schedule, court appearances – noted by 8 respondents.

## Changes in Types of CPD Activities Undertaken

Almost all of the barristers responding – 98 per cent - had experience of undertaking CPD activities under the previous scheme for barristers. These barristers were asked to identify the types of CPD activities that they undertook in the old scheme and activities carried out in the new scheme.

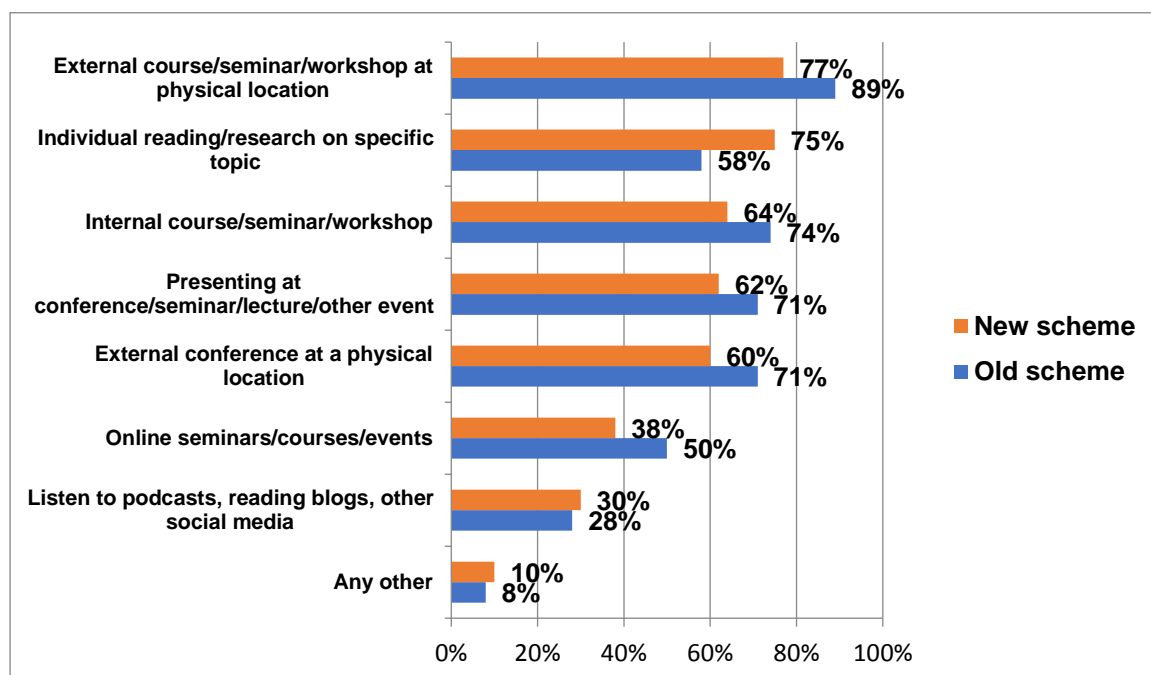
External courses, seminar, and workshops at a physical location are still the most popular activity in the new CPD scheme although undertaken by a smaller percentage in the new scheme compared to the old scheme – 77 per cent compared to 89 per cent in the old scheme.

Attending an external conference at a physical location has become less popular in the new scheme with 60 per cent identifying this as an activity in the new scheme compared to 71 per cent in the old scheme. Conferences can be anything from a day

to a few days in duration, and can also be a costly activity. Busy working lives and often unpredictable work patterns, along with the wider choice of CPD activities available under the new scheme, may be prompting some barristers to drop these events in favour of other CPD options.

Individual reading and research on a specific topic has become more prominent in the new scheme, identified by 75 per cent as an activity compared to only 58 per cent in the old scheme. This is the only activity that has become noticeably more popular in the new scheme although listening to podcasts, reading blogs, and other social media has increased slightly.

**Figure 6: Activities Undertaken in New CPD Scheme and Old CPD Scheme**



Source: IRN Research Online Survey of Participants in BSB EPP CPD Scheme, 2019. N= 553 respondents

The main activity in the “any other” category for both the old and new schemes, was writing or editing books and articles. More than half of replies in the “any other” category covered this activity.

**Activities to Include in CPD**

Over three-quarters of respondents (77%) were satisfied with what they can count as CPD leaving 23 per cent that would like to include some activities not currently counting as CPD or, they are not sure if they can count as CPD.

Five activities in particular were highlighted by respondents:

- Preparing and presenting lectures and training courses on legal areas
- Coaching/training on soft skills, eg wellbeing, diversity
- Mentoring students/pupils in chambers
- In-depth research for a specific case or work area

- Social media – using it for content or learning about how to use it.

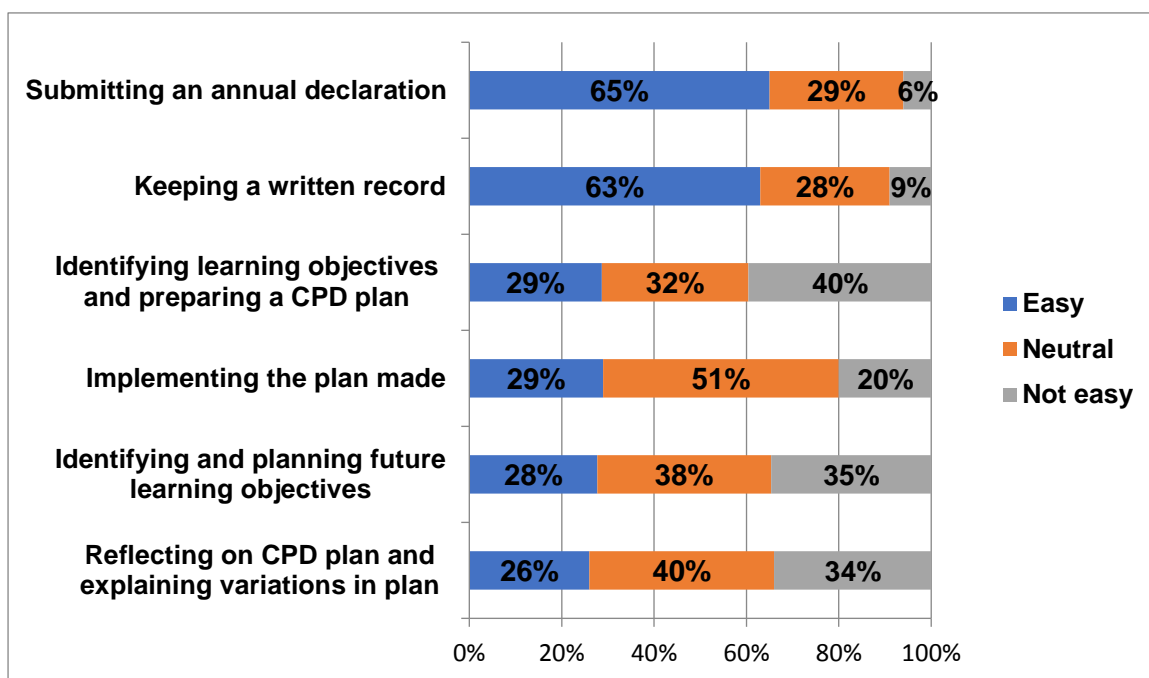
The first of these activities is currently accepted as counting towards CPD and described in Paragraph 37 of the BSB’s guidance as “presenting seminars, lectures and workshops”.

**Ease of Undertaking the New CPD Requirements**

There are a number of elements of the new CPD requirements that many barristers do not find easy. A clear majority of barristers find the simpler tasks easier, i.e. submitting an annual declaration and keeping a written record. However, only a minority find the other elements easy:

- Only 29 per cent find identifying learning objectives and preparing a CDP plan easy and four out of ten – 40 per cent – did not find this easy.
- Only 29 per cent find implementing the plan made easy but over half (51%) give a neutral answer here. 20 per cent did not find this easy.
- Just 28 per cent find identifying and planning future learning objectives easy with 35 per cent stating this is not easy.
- The smallest percentage - just 26 per cent - find reflection easy while over a third – 34 per cent - did not find this easy.

**Figure 7: Ease of Undertaking CPD Requirements**



Source: IRN Research Online Survey of Participants in BSB EPP CPD Scheme, 2019

For those finding certain elements not easy, the main concerns are:

- Identifying learning objectives and preparing a CPD plan – the difficulty of preparing a plan at the start of the year when some CPD demands might change in the year, and unforeseen demands emerge.

- Implementing the plan made – linked to above factor that plans might change during the year, or work commitments take over, so original plan cannot be implemented.
- Reflecting on plan – uncertainty and confusion about what reflection actually means, plus some criticisms that it is pointless and a waste of time.

**Selected comments:**

*“CPD opportunities are often reactive when interesting opportunities arise making it harder to plan as an exact measure”.*

*“It is difficult to predict learning needs in advance - the job of barrister does not lend itself well to such strait-jacketing and monolithic inflexibility. I would rather identify learning needs throughout the year as they arise in the context e.g. of cases”.*

*“There will inevitably be new caselaw and legislation in the course of 12 months that one both can and cannot plan for. A plan needs to be proactive where one can plan and reactive where one cannot”.*

*“The balance between paying work and implementing the plan is difficult. The availability of material/courses/conferences/seminars sometimes conflicts with well-being issues and it becomes an additional pressure”.*

*“I think the reflection has little use or impact for me and am doing it because it is required”.*

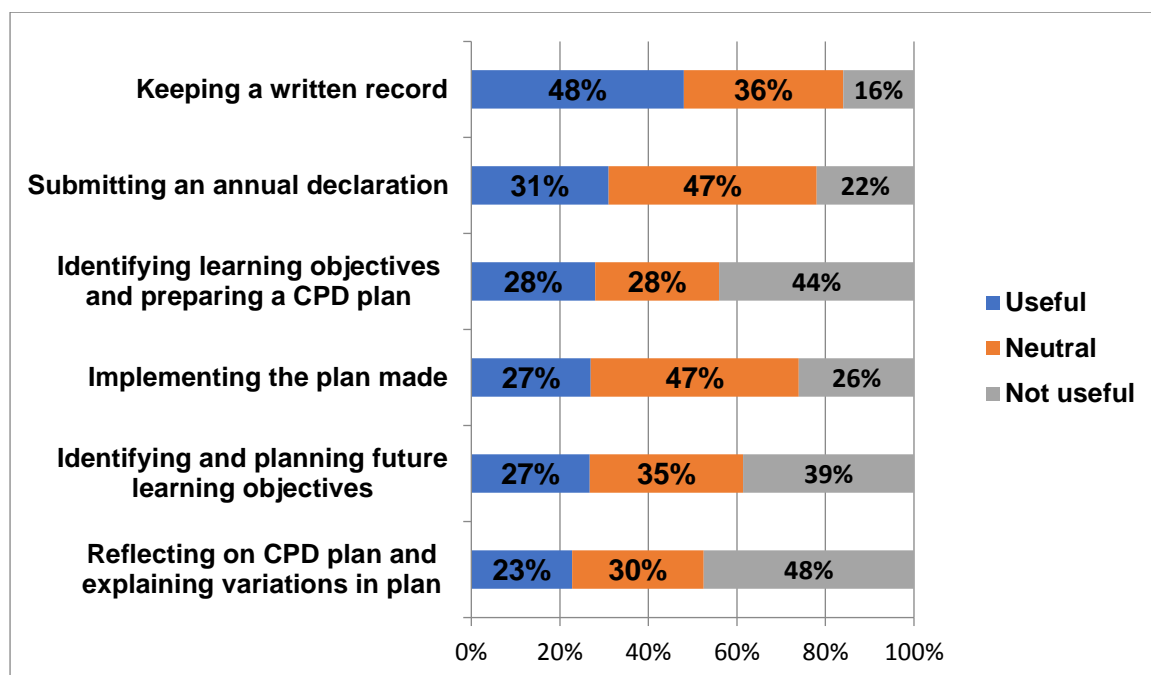
*“I have found this part of the process rather artificial. Reflection occurs throughout the learning process and is a part of planning”.*

**Usefulness of Each Element of the New CPD Requirements**

Survey results show that most barristers have yet to be convinced of the usefulness of the various elements of the new CPD scheme. The largest percentage – 48 per cent - find that keeping a written record is useful but, at the other end of the scale, only 23 per cent state that reflection is useful. Almost half – 48 per cent - feel that it is not useful. Only just over a quarter state that they think most other elements are useful.



**Figure 8: Usefulness of Elements of New CPD Requirements**



Source: IRN Research Online Survey of Participants in BSB EPP CPD Scheme, 2019

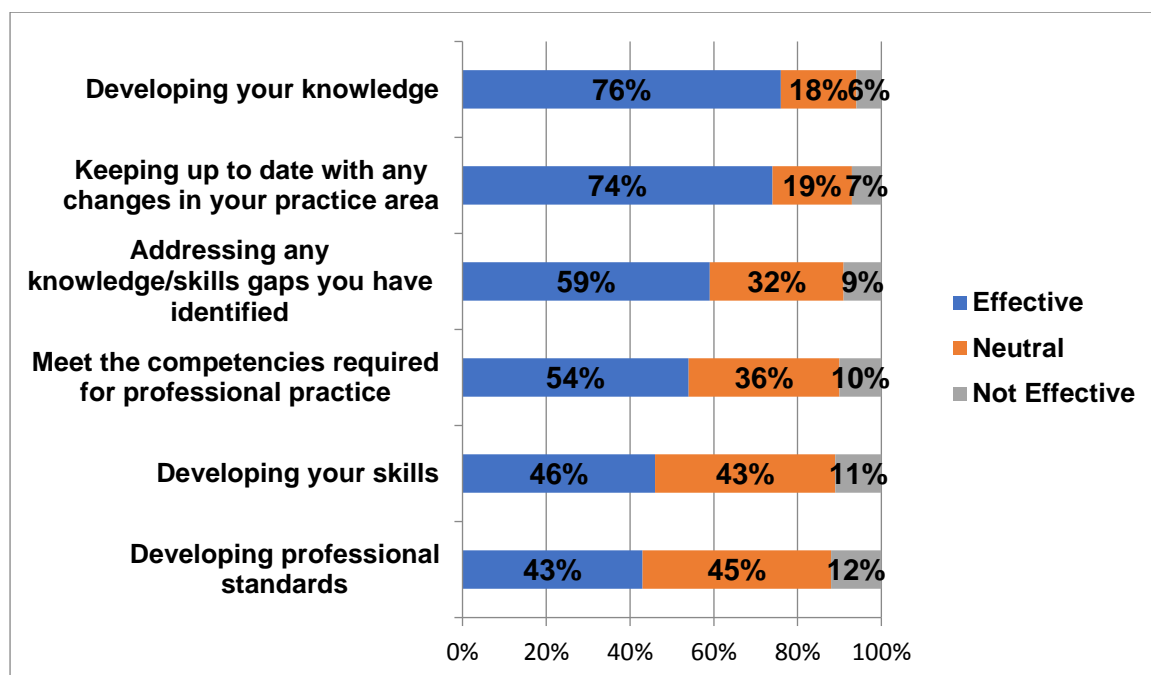
**Effectiveness of CPD Activities**

While there are concerns about elements of the new CPD scheme, a clear majority agree that the CPD activities are effective in developing knowledge and keeping up to date with developments in a practice area: 76 per cent and 74 per cent respectively state that they are effective.

A majority also agree that the CPD activities have been effective in addressing any knowledge or skills gap and meeting the competencies for professional practice.

In most cases, only 10 per cent or less state that they have not been effective.

**Figure 9: Effectiveness of CPD Activities in New Scheme**



Source: IRN Research Online Survey of Participants in BSB EPP CPD Scheme, 2019, N=553 respondents

**Meeting the Requirements of the New Scheme**

Half of all barristers responding (50%) state that they have found it difficult to meet the requirements of the new scheme compared to the old scheme. It is seen as slightly more difficult by 26 per cent and much more difficult by 24 per cent.

Only 29 per cent think that it is easier – 19 per cent slightly easier and 10 per cent much easier – while the other 22 per cent feel that it is much the same as the previous scheme.

**Selected comments:**

*“The previous scheme really involved little more than just making sure you (1) did enough CPD events and then (2) kept a record of them. The new scheme actually requires some thought! I think it is much harder to comply with but, at the same time, a lot better”.*

*“The old scheme was bureaucratic and intrusive. It had less to do with quality and improvement than with box ticking for the BSB. The new scheme is somewhat better balanced”.*

*“The more extensive record keeping entails slightly more work”.*

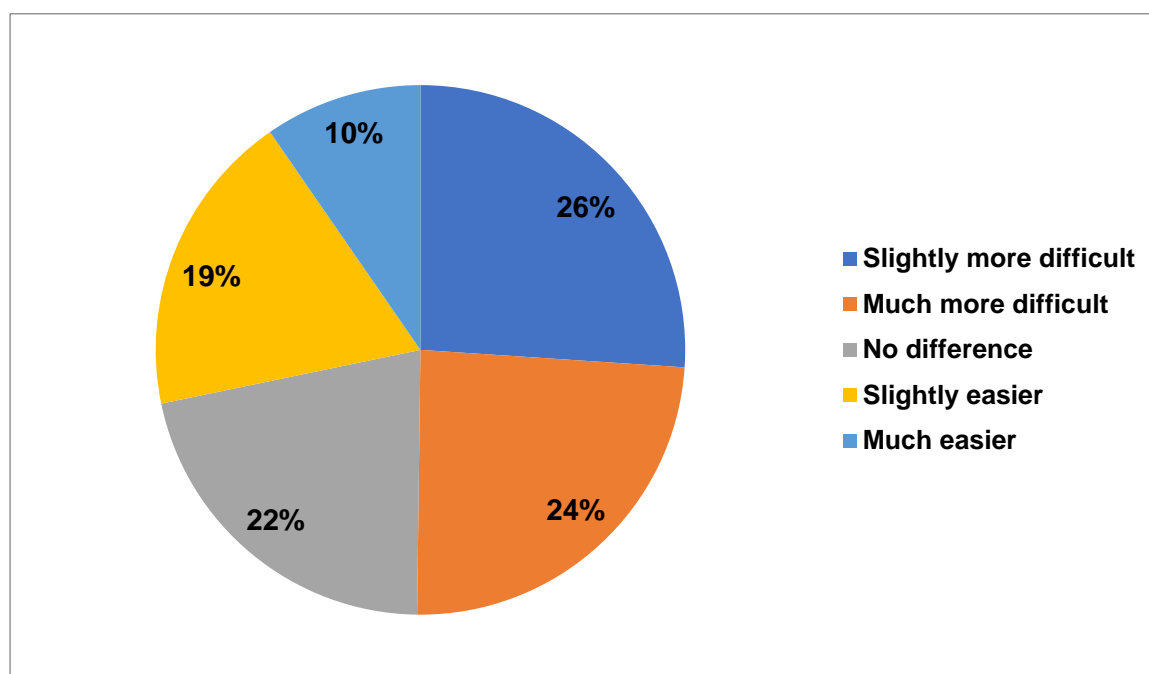
*“It requires slightly more work, hence slightly more difficult, but easier in the sense of not having to try to find accredited courses to suit interest / needs”*

*“I would rather fill in a list of activities I have engaged in and how long they took, as previously, rather than have to write a multi-page document covering professional competencies, many of which are obvious for a job such as that of barrister”.*

*“The old scheme was easily understood and applied. A barrister was required to undertake a set number of hours of professionally valuable and accredited CPD activities, and to complete a simple record. Compliance could be easily and objectively tested. The current scheme requires much more elaborate form-filling, testing only the ability of barristers to formulate rationale in management-speak for activities”.*

*“I like the flexibility of the new scheme. It’s cheaper. In years to come I know I’ll rate it as ‘much easier’”.*

**Figure 10: Ease/Difficulty of Meeting Requirements of New CPD Scheme**



Source: IRN Research Online Survey of Participants in BSB EPP CPD Scheme, 2019, N= 553 respondents

There was no clear consensus among respondents as to whether learning, training, and professional development needs are better met under the old scheme or the new scheme:

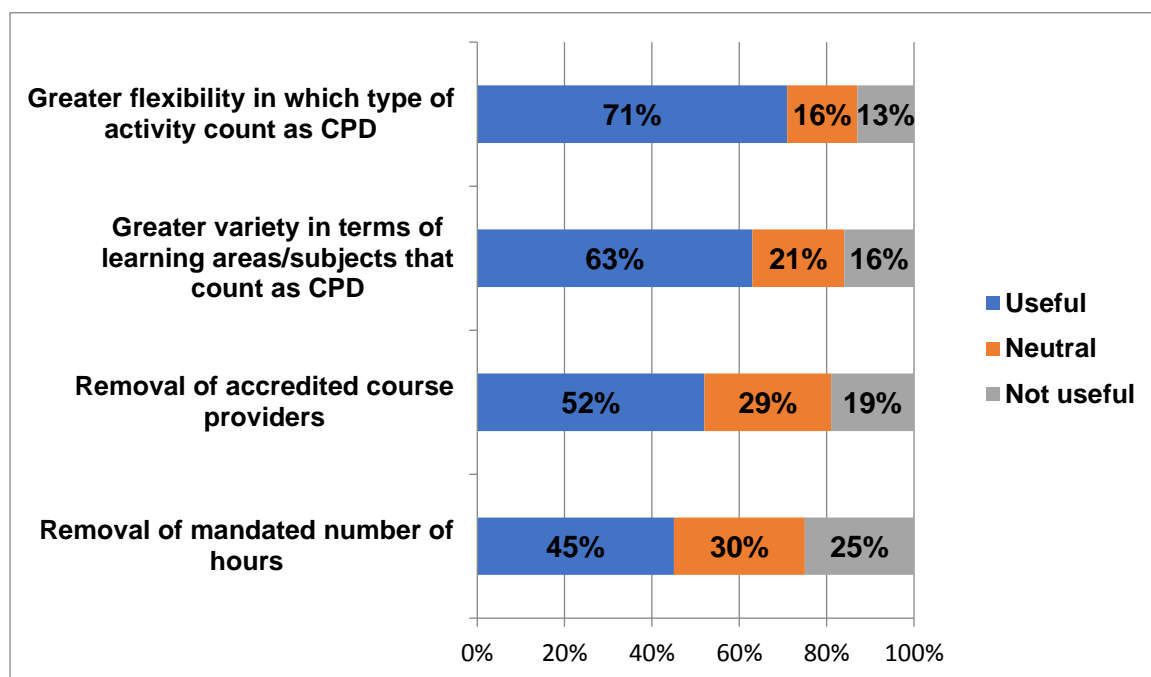
- 33 per cent say they are better met under the new scheme
- 28 per cent say they were better met under the old scheme
- 34 per cent feel that both schemes were the same
- 5 per cent are “don’t knows”.

### Usefulness of Changes Made

Over 70 per cent like the greater flexibility regarding which type of CPD activity can be undertaken in the new scheme – 71 per cent said that this is useful. Linked to this, 63 per cent find the greater variety of learning activities that count as CPD useful.

The removal of a mandated number of hours is only identified as useful by 45 per cent and just over half – 52 per cent - think that the removal of accredited course providers has been useful.

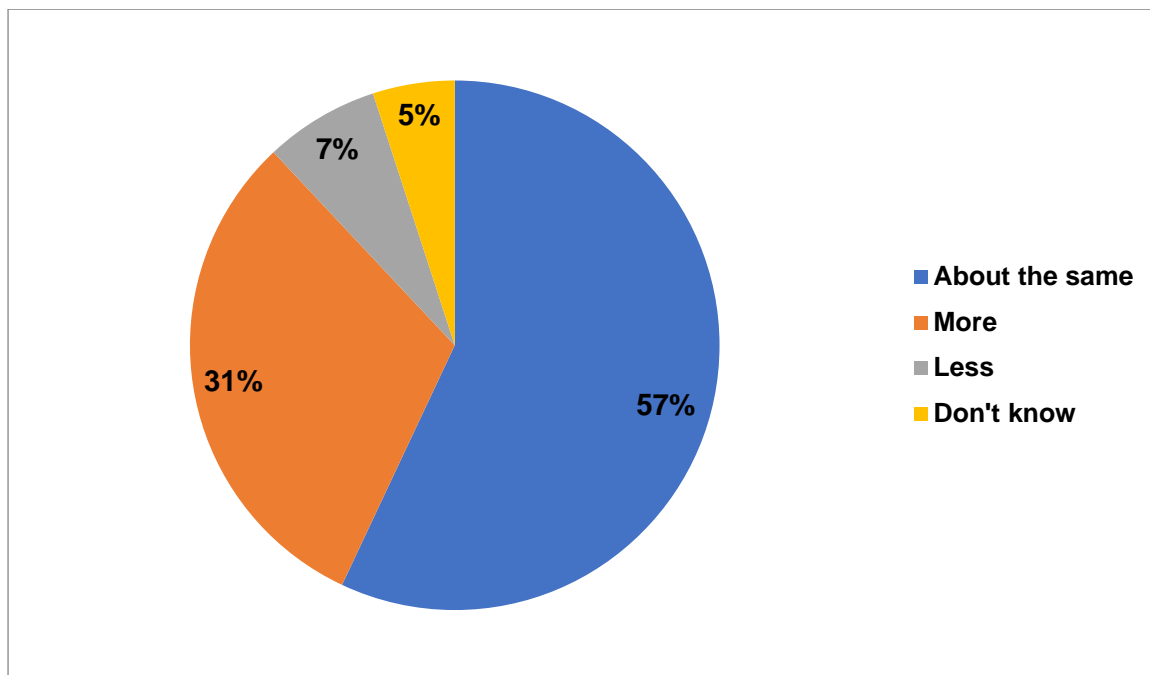
**Figure 11: Usefulness of Changes Introduced in New Scheme**



Source: IRN Research Online Survey of Participants in BSB EPP CPD Scheme, 2019

### Time Spent on CPD Activities

For a majority of barristers the time spent on CPD activities has not changed in the new CPD scheme compared to the old: 57 per cent say they are spending about the same amount of time now as they did before. Just under a third – 31 per cent - feel that they are spending more time on CPD activities now: one consequence of the new scheme is that a notable minority are undertaking more CPD than previously. Just 7 per cent are spending less time.

**Figure 12: Comparison of Time Spent on New and Previous CPD Schemes**

Source: IRN Research Online Survey of Participants in BSB EPP CPD Scheme, 2019, N= 553 respondents

### **Year of Call Differences in Survey Results**

An analysis of survey results by year of Call band reflects some variation in results for certain questions with barristers in the less than 10 years Call band generally providing a more positive reaction to the new CPD scheme compared to the overall survey. However, the analysis is based on a relatively small sample of barristers in the less than 10 years Call band so should be treated with some caution.

All the changes listed in the survey for the new scheme are seen as useful by a higher percentage of less senior barristers than the survey as a whole, and a majority of less senior barristers think their learning, training, and development needs are better met in the new scheme compared to the old scheme. The percentage in group that think their needs are better met under the new scheme is almost twice as high as other groups of respondents.

**Table 13: Comparison of Selected Results by Year of Call**

Question	Year of call			Total
	Up to 10	10-15	15+	
<i>Sample number</i>	51	84	431	566
Use of SBAs for information and guidance	33%	23%	21%	23%
Listening to podcasts, webinars in new CPD	39%	33%	29%	30%
Identifying learning objectives and preparing a plan seen as useful	33%	28%	25%	27%
Reflecting on CPD plan seen as useful	29%	22%	22%	23%
CPD effective in developing skills	55%	46%	45%	46%
CPD effective in developing professional standards	51%	46%	41%	43%
<b>CPD effective in keeping up to date</b>	<b>63%</b>	<b>74%</b>	<b>75%</b>	<b>74%</b>
Which of the changes in the new scheme are useful?				
Greater flexibility in which type of activity counts	89%	72%	69%	71%
Variety in learning activities that count as CPD	82%	64%	61%	63%
Removal of mandated number of hours	67%	45%	43%	45%
Removal of accredited providers	63%	49%	51%	52%
<b>Those who you think learning, training &amp; professional developments needs are better met under new scheme</b>	51%	29%	32%	33%

Source: IRN Research Online Survey of Participants in BSB EPP CPD Scheme, 2019

### Differences in Results for QCs and Total Survey

The online survey was completed by 87 QCs and in general the responses from this group followed the pattern of the overall survey with just a few exceptions:

- More QCs understood the requirements of the new scheme compared to the survey overall: 64% of QCs understood reporting compared to 53% in the total survey, and 54% understood reflection compared to 46% overall.
- 38% of QCs found completing the reflection easy as opposed to 26% overall.
- There are clear differences in the factors considered important when choosing a CPD activity: 53% of QCs turned to peers and colleagues but this drops to 25% in the total survey. In the survey overall, 51% considered the time available for a specific CPD activity as important but only 39% of QCs said this.
- Nearly a third of the total sample – 31% - say that they are undertaking more CPD in the new scheme compared to the old scheme but this falls to 23% of QCs.

## 3.4 Telephone Interview Programme

### Introduction

In June and July 2019, 30 in-depth telephone interviews were conducted with barristers to explore some of the themes arising from the online survey in more

detail. The interviews were conducted with a sample of those barristers completing the online survey that expressed a willingness to take part in a telephone interview.

A full list of questions asked is included in Annex D.

### **Key points**

- Most interviewees see CPD to be important for personal and professional development in order to offer the best service to clients. Career development and compliance are less important;
- A lack of time and the amount of paperwork involved are the main barriers to completing CPD;
- The role played by Chambers Directors, CEOs, Practice Managers, and Clerks in supporting CPD activities is limited in most instances, although many chambers run their own CPD events;
- Planning learning and development is driven by new case work and keeping on top of case law;
- Most had no expectations about the new scheme. Those that did were looking forward to a scheme with more flexibility and a broader choice of activities. These expectations have been met in most cases;
- Planning is seen as a useful exercise but many find it difficult to plan at the start of the year as CPD requirements change through the year;
- Over half of interviewees understand the value of reflection but others are less clear;
- Everyone agrees that CPD contributes to the overall sense of competence but around a third also point out that, in their view, the new CPD system is irrelevant, ie they would still undertake their CPD whether the system existed or not; and,
- Around half feel that the new CPD scheme encourages barristers to take responsibility for their own competence and professional development while most also accept that the new scheme is relevant to the way they practise.

### **Understanding**

When barristers were asked to explain their understanding of CPD the focus is on maintaining one's personal and professional standards in order to offer the best services to clients. For many barristers, the importance of CPD is the fact that it enables them to keep up to date with changes in the law and procedures. It is not so much a matter of career development nor is compliance seen as an important issue. Compliance is mentioned by some as an encouraging or motivating factor to undertake CPD but these barristers add that they would be doing their CPD activities anyway.

There is some mention of compliance but not from a regulatory perspective rather compliance from a legal standards point of view, ie barristers keep up to date as they don't want to be liable or provide inaccurate advice in a court case.

One or two see CPD as 'giving back' to the profession, emphasising a duty to share knowledge and experience with others.

**Selected comments:**

*“How can I phrase this well. It's important for providing the best service to clients. To keep up to date on relevant law and procedure but also conducting my professional practice in the best way.*

*“Keep standards high and maintain the reputation of the profession. Maintain the quality of service provided to clients and the court and other professionals. I suppose compliance for the sake of it. Even if I thought the scheme was useless I would always do it. The requirements are out there but I don't think I do more than is required”.*

*“Ensure that after we are called, we maintain and update our learning. Can't stagnate or sit on laurels. Ensure that we learn what is necessary and update ourselves, think about what we need to increase our knowledge of. It's a key component of the job. Keep skills sharp. Primarily professional effectiveness”.*

*“I don't mind doing CPD because I look at it as important for my professional development and a key part. That's rather than having to do it to satisfy some regulatory requirement. I am working in-house so it's just part of keeping up to date. I guess it's different for barristers in chambers who might see it as an interference”.*

**Experience of CPD**

The major barrier in terms of completing CPD, noted by many interviewees, is the lack of time available for some CPD activities usually caused by work pressures. Key problems raised include the requirement to travel to a CPD event when you are on circuit or called suddenly into court. The London-centric nature of many seminars is another issue and a frustration for some.

The other major concern is the amount of paperwork that has to be completed by individual barristers to fulfil the administrative requirements of the scheme.

A group of barristers working in very specialised practice areas feel that some barriers have been lifted under the new scheme compared to the old scheme. The general view is that the old scheme had been limiting and forced them to undertake CPD activities that were not always relevant to their specialisms but had to be done for the CPD hours. The new scheme is seen as more flexible enabling them to participate in CPD activity that is more relevant to them.

The flexibility of the new scheme is also a positive for some in the employed bar: previously they had to attend courses that were not particularly relevant for them as focused on chambers just to make up the CPD hours.

**Selected comments:**

*“Just time I think. I am at the senior level of the Bar and work is often intense and the only weakness I can see of the new scheme is that there are no reminders like the old scheme. You knew you had to do certain things from accredited providers but now you can lose track of where you are and what you have done”.*



*"It's a great chore. Infringes on my practice. Everyone I speak to works weekends, things come in at night, unstructured. Time is the biggest issue, finding the time and being regular about it. My notes are handwritten, to try and get them sorted. Done on buses or trains, or when I can find the time".*

*"Difficult being on circuit as loads of the stuff is in London which means 2 days out of course. Reality it's not open to us. That makes some of the more formal courses more difficult. That's the biggest barrier in terms of doing things that are useful".*

*"Don't think so. I like the new CPD. The old CPD was structured around the bar practice, how do you cross examine, how do you interview etc. They have always been focused on court activity. It was hard for myself, as part of the employed bar, as those elements aren't relevant. A lot of the CPD awarded especially when you are in-house is more geared towards solicitors. So, what was difficult is that I had to sign up to specific providers, eg bar professionals, to do the relevant CPD. It was hard to do that. Often I was signing up for courses I'd already done just to get the CPD. The new CPD passes the obligation on to the individual as to what's required, I can structure it much better for my career now. I can attend a course at Kings College and do a weekend course on competition law and cybersecurity which is much more relevant. Previously there was a lack of flexibility given to the employed bar".*

*"No before I found it quite limiting because the area I practise in is quite specialist. Having been doing this area of law for 17 plus years it was very difficult to find courses that actually told me something new or that would really help me in my work so I tended to go on courses that were just to tick boxes. Now I think I have a lot more diversity in how I meet the requirement. There are a lot more things that have a relevance to me on a day to day basis".*

The role played by Chambers Managers, Chief Executives, Practice Managers, and Clerks in supporting CPD or undertaking CPD activities seems to vary from one chambers to another.

For most of the interviewees working in chambers, there is a limited role from management and support staff with reference to the CPD process itself, i.e. reviews of CPD, CDP planning, knowledge sharing, supporting the CPD administrative tasks of barristers. A number of barristers accept that it is a very individual exercise so it can be difficult for chambers to do much in terms of support with the process.

There are some exceptions to this pattern but, even here, the emphasis was on support and advice around the time of the introduction of the new scheme rather than ongoing support and advice. Just two or three interviewees mentioned chambers staff having regular role to play: the Head of Compliance at one chambers offers updated information on CPD activities and advises barristers; another has regular practice development meetings involving senior clerks and barristers where CPD is discussed; the Chambers Director at a third chamber gave a presentation on the new scheme to all barristers in 2017 and continues to update on, and check on, CPD progress with barristers.

Where chambers have been helpful is in running internal seminars, workshops, and discussions which have counted as CPD. Many of these have focused on practice

management, compliance, and operations such as equality and diversity training, IT training, and GDPR.

Seven interviewees were employed barristers working in-house, some in the public sector and some in the private sector, and five of these explained that CPD planning and reviewing are included in some way in either a regular performance review/ personal development review or a regular professional development team meeting.

#### **Selected comments:**

*“Loose chambers, don't really provide any support. It's very individual. No committee, no planning process or support. Probably goes against the spirit of the rules”.*

*“No role and I don't think I would expect it. Barristers talk to each other and pass details on but CPD has never come up as a topic. How could we review it in Chambers - we don't have an HR department, we don't have performance reviews. I sometimes think the scheme has been set up by people who don't understand what barristers actually do”.*

*“Not really much support. It is framed for us as individuals and it relies on self-educating, self-training and updating ourselves”.*

*“I have regular practice development meetings with our senior clerks and we will discuss areas that I can work on. Chambers put on seminars for solicitors and we can take part and suggest topics. Plus I can attend internal seminars run by colleagues”.*

*“Yes, I had informal advice and information from the Practice Manager and Chief Executive in Chambers but I think this is something that should be formalised and Practice Managers or Chief Executives should take a leading role in. By providing information on CPD content, monitoring what we do and keeping us on track. The Systemisation of CPD - it's not something barristers like and inherently rail against but I think it would help. Chambers can also help by running their own courses and events. We have started to do this and to give lectures to law firms and this is a growing area”.*

#### **Learning and development**

The ways interviewees identify areas for learning and development are varied and wide ranging but the largest group say that identification is primarily driven by new case work and the need to keep on top of case law. The result is that many in this group see identifying learning and development objectives as on-going and not something that can just be done at the start of the year. It also means that updates on case law and research/reading around a case are important as CPD activities.

Others were working in fairly stable practice areas so have a clear idea at the start of the year what their learning and development issues and the CPD activity needed to address these. A small number were trying to extend their own personal practice into new areas and this is a factor influencing their learning and development plans.

A number of interviewees also highlight two separate categories of CPD for them, i.e. one is learning relating to cases and practice areas, and the other is management and skills training. CPD activities in the latter category are increasingly being included in CPD plans.

#### **Selected comments:**

*“It’s an ongoing thing rather than identifying say at the start of the year. It’s about what case is next and what I need to do to understand the complexities of it. It’s a cognitive process”.*

*“Things come up in relation to a case, where I develop my knowledge. You can see something coming e.g. a change to the insolvency rules. I was consulted on that so I knew it in advance and may have written it down as a learning goal to develop. I suggested it to seminar committee and we therefore put together a plan so we had the opportunity to respond. Sometimes it’s reactive. GDPR something else you can see coming, as a practice management issue. We organise training in chambers”.*

*“It has become more self-evident given the sources I am looking at regularly. It’s about keeping on top of new case law”.*

*“My practice area is fairly stable so I can normally gauge the activities I need to do and early on in the year. I have stuck to the same types of courses and conferences by and large that I would go to under the old scheme”.*

Virtually all those interviewed felt that there are no gaps in their learning options: just one barrister working in a highly specialised area found it difficult to find relevant CPD activity. For many, the opposite is true: most feel overloaded with information and options with not enough time to take part in all of these.

There is also high awareness and extensive participation in CPD topics focusing on areas beyond the practice of law, for example equality and diversity, stress management, and ethics. Many have attended internal events, and external events run by the Bar Council, SBAs and the Inns of Court.

<b>Content theme</b>	<b>Comments</b>
<b>Equality and diversity</b>	Most are well aware of this, have taken courses and commit to being aware and up-to-date.
<b>Staff &amp; chambers management</b>	Not that relevant, not that much of a priority. Not really applicable for most – depends on if a person has relevant role in chambers.
<b>Handling witnesses/clients</b>	For those interested it was a big priority, particularly for a few barristers working in crime, family law and/or dealing with vulnerable witnesses. Most felt that it was not a huge priority.
<b>Wellbeing/stress management</b>	Important. Some understand it’s important for the profession but personally can find it difficult to find the time to put it into practice.
<b>Ethics</b>	Majority understand that this is vital to their profession.

## Comparison

Almost half of those interviewed did not have any expectations about the new scheme before it was launched.

Where expectations existed, the largest group envisaged more flexibility in CPD choices, and/or a broader choice of activities. For most of this group, their expectations have been met. Others thought that it would be an easier scheme to take part in than its predecessor but say that it is not. Finally, another group anticipated that it would create more self-discipline by encouraging barristers to choose more relevant CPD rather than wasted time on irrelevant CPD activities just to get the hours. This latter group are satisfied that the new scheme achieves this aim.

Some are dissatisfied with the change to self-reporting with the complaint that it's more work. Interviewees say that the old scheme involved a relatively simple tick-box exercise but the new scheme requires more work to record, report, and reflect.

### Selected comments:

*“Didn't really know until I went to a Bar Standards Roadshow. It seemed more flexible but the paperwork is too much”.*

*“I didn't really have any but I do think the new scheme has improved self-discipline and is probably leading to a more results-based practice. What I mean by that is we are not wasting time on CPD we don't really need but focusing on what we have to do. We are also not wasting money - last year I had a long case that spilled over into extra weeks which meant I couldn't attend a course I was booked on. Only partial refund”.*

*“It seemed that it would be more flexible and I am glad that it has been extended to cover areas like people management”.*

*“No strong expectations, although it was a relief to structure CPD in the way that is more suitable for my practice”.*

*“I was very much against it when CPD was first mooted. If you are conscientious in your profession, part of that is getting to grips with your areas of practice. I've actually greatly enjoyed having to do it. When the rules changed recently I was a little bit thrown by the onus on the individual to have a plan. I thought it was so much easier to do your set hours. I understand that lots of people go to irrelevant lectures just to get their points which is totally worthless. It's better now, it's more work, you have to reappraise yourself. It's probably more work though but you are more personally accountable”.*

Some have noticed a reduction in the number of courses available, but most of these also feel that many irrelevant courses for them have gone. There is a sense that courses are now more streamlined, focused, and issues-based. Just one or two miss the accredited courses scheme as they felt it was reassuring. Others have cut down

on external courses anyway but not directly because of the new CPD scheme. Their activities have become available at less cost.

## Process

Overall, planning is seen as useful, although the main concern is that it is difficult to plan at the start of the year as things change as the year develops. Some plans are inevitably modified throughout the year. Planning around practice management issues is more effective at the start of the year, but it is more difficult to plan ahead around legal matters as this is so case work dependent. A very small number of interviewees saw the exercise as pointless.

Virtually everyone appears to understand the recording element, i.e. the details required and range of CPD choices. Methods vary from recording activities in a spreadsheet to taking notes on the back of a bus ticket. The BSB template was not universally popular with the terminology seen as irritating.

Apart from three interviewees who were unclear about what reporting actually means<sup>4</sup>, everyone felt they understood what this involved. However, a number of interviewees mention that there is no need to formally report under the new scheme so some were confused why this question was asked. The view among others was that the data is retained in case of spot checks but it is no longer submitted to the BSB. One or two noted that it is a “tiresome” or “tedious” exercise.

Just over half of those interviewed see the value and importance of reflection with some noting that barristers do this anyway although they may not always write it down. Positive comments range from “it’s OK”, “it’s a natural extension of what I do” to “very useful”. One or two state that it is useful in principle, and understand the reason behind it, but feel it is too bureaucratic, or are resistant to the terminology used. Regarding the feedback on terminology, one or two felt that it is “management speak”. There are mixed responses around reflection in the remaining group but they split almost equally into three categories:

- Those that do not understand completely what they are expected to do
- A group that say they use the same text as the previous year, or cut and paste a previous version. This group includes those that generally follow the same CPD programme year-on-year so use the text for reflection as previous years. There are verbatim comments to explain this below
- Those that think it is a pointless exercise

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<sup>4</sup> Reporting consists of an annual declaration that CPD has been completed, as well as submitting full records to the BSB if required.

**Selected comments:*****Planning***

*"It's hard to plan to be honest, at least at the start of the year, because its more about reading around a case as it comes in and develops or spotting something new in a newsletter or feed. You can't plan that".*

*"I don't know at the beginning of the year what I do the whole year. I don't sit down in Christmas and think, I don't know. It's like a pointless new year's resolution. It's just what I do. I haven't a clue as determined by case load".*

*"It's useful, it makes you think in advance about what might be important. It makes you record things and that's useful. For the law side of it, it can feel a little artificial. There is so much there, so many different things that are valuable to know in more depth. What I suspect most people do is going to the course that's available on the date they can do they go and change their record. Planning at the outset is a bit artificial, for the law side. For the practice management side the CPD is more useful - otherwise it goes to the bottom of the pile".*

*"I have a real problem with having to plan at the start of the year. Things change all the time as the year moves on so how can you plan in this way? For example, there has been a lot about online divorce and online courts in recent months which I am catching up on but I didn't have this as a priority at the start of the year. Another one has been the changes in probate law which I thought I should update on and I came across a webinar near the end of the year and participated in this for an hour. It was run by a legal aid group and just cropped up in the year".*

***Reflection***

*"I get the reasoning behind this but I just think it's a sledgehammer approach. I think we are capable of deciding ourselves what we have learned and if we need to do more or something different. It feels like it's a test from the BSB which I know has put some backs up".*

*"I'm a professional, the outcomes are what I want. The reflection is a bit of a waste of time. I have the confidence to believe that the plan will deliver the professional, correct outcome. The reflection isn't something I focus on, it's about the PLAN and the DELIVERY. For those at a more junior level it could be more useful".*

*"I think the idea of self reflection is another woolly area. I don't see how that improves the process. It's ultimately as good as how you want it to be. If you think of something at the beginning of the year you might reflect on it then but more often than not I am looking back on what I have done".*

*"Very useful. There is always a danger of becoming complacent, if you're just doing the same things day in day out".*

*“I think this is useful but maybe it needs a few more years to see if reflection helps to move things forward by identifying gaps and setting out CPD areas that might need to be explored in the coming year. Still a work in progress”.*

*“Once you have done it in one year then you can really cut and paste what you said in subsequent years. There are dozens and dozens of barristers that I know that say that is what they do”.*

*“The problem here is that I am just repeating what I said before in the previous year. It’s repetition. I am not sure what it means but I think it says what have I learned over the year and is it contributing to my professional development. My simple answer is yes”.*

### **Guidance and support**

Almost everyone agrees that they had been well supported particularly from the BSB, Bar Council, email feeds and colleagues.

As the online survey results noted, BSB guidance from the website was used by a large percentage of barristers around the time of the implementation of the new scheme and this is confirmed by a large majority of the interviewees. One or two also then checked back at a later stage when completing the form or checking for any changes to the rules. Other sources mentioned by the interviewees are the Bar Council, SBAs and Inns of Court.

As answers to an earlier question highlighted, most are satisfied with the guidance available but there are some issues about the way the guidance was written, i.e. too text-heavy and too bureaucratic.

Regular use of the sources is not that common. Everyone looked at sources of information around the start of the new scheme but only a few have checked since then.

The only constraint mentioned in terms of accessing and obtaining information on the new scheme is time and this was only highlighted by three or four interviewees.

### **Effectiveness**

Everyone interviewed agrees that CPD is an important contributor to an overall sense of competence but around a third also point out that, in their view, the new CPD system is irrelevant, i.e. they would still undertake their CPD whether the system existed or not.

### **Selected comments:**

*“It is valuable. You have to keep up. This is the modern era and everyone has to develop and keep up. The scheme is useful but it is intrusive. But the public demands it. You need the barrister to be up to speed, you can’t just do the qualification”.*

*"It's important. I don't know how much the formality of the scheme helps, but the concept of striving to be better and to learn new stuff and to be better prepared and better manage your practice is hugely important. We are used to fighting to be better, that's the academic requirement. If you are ambitious it's inevitable that you would do CPD and you would do it if the scheme is there or not".*

*"Invaluable. You identify the areas in which you're deficient, and the courses or things that you need to do to satisfy that deficiency so therefore you contribute to your own accomplishments".*

*"It's really important and seen as important by the local authority. Any drop in competence or a slip in professional standards could have major consequences in my area of law and many others".*

*"It's important for my day to day work but I have always done it anyway and I don't think we need the formality of all the administration from the regulator".*

A majority interviewed understood that there may be sanctions and consequences if CPD is not complied with. The rest were not aware of the sanctions. Most in the former group also understood that there would be a light touch at first from the regulator and major sanctions would only be applied for failing on a regular basis to comply. Around a third of those interviewed are concerned that talk of sanctions is just a heavy handed approach from the BSB and another unnecessary element of the new scheme.

#### **Selected comments:**

*"Ultimately you could lose the right to practice. There are a few steps to go through first but you need to complete accurate records".*

*"I don't know what happens if you have done nothing but my understanding from reading the guidance document is that if I have made some effort in the first instance then I would be given an action list before there are serious repercussions".*

*"Yes but I don't want to be dealing with the BSB over something so simple. Even if they are just checking on something then even a slight contact is unwelcome. It feels like pestering about what I did last year and an unnecessary irritant. Nothing might happen but you never know".*

*"No idea what the sanctions are. I know a barrister who continually failed to report his CPD and he did get into trouble".*

As with the replies to the question on competence, around a third of interviewees said that they have always taken responsibility for their own competence and professional development and the introduction of the new scheme has made no difference.

However, half of the interviewees agree that the new scheme has encouraged barristers to take responsibility for their own competence and professional development.



**Selected comments:**

*“I think so and more so than the old scheme. My only thing is that as it is less prescriptive compared to the old scheme I forget what I need to do, time slips by, and I am completing all the forms at the end of the year in a rush”.*

*“I think it helps to do and discipline yourself to take responsibility so I can see why it was brought in. There was always that thing in the old scheme when you got to November and thought I must do this to get my CPD points whereas now it is less frantic. But please make it simpler to report and reflect on”.*

*“I don't think it alters fundamentally. It suggests to us other ways rather than just doing the law, the other things that are helpful. Apart from this it doesn't make a difference. People do it with or without the scheme”*

*“I think it may have the opposite effect. The good ones have always taken CPD seriously and still do. The bad ones can now hide in the new scheme. There are spot checks I think but these are limited whereas in the old scheme it was easy to spot which ones had not completed the required CPD”.*

Despite the reservations expressed by some in response to previous questions, most interviewees accept that the new scheme is relevant to the way they practise. Primarily this is because the new scheme enables a barrister to focus on CPD content and specific activities that relate more closely to their work areas, and any issues or case work arising, compared to the old scheme. A small number feel that it is much better than the old scheme.

For a few very experienced practitioners there is a sense that it might be not 100% relevant to them, or at least the old scheme was just as good, but overall it is relevant. Comments here mainly refer to some of the new topic areas now acceptable as CPD, such as well-being, stress management, and inter-personal skills training.

**Selected comments:**

*“It's much better. It seemed that years ago when I worked in Chambers it was like the end of the year is coming so we need to go on as many courses as we can. My colleagues would be saying I have to go on this one, let's get on that one. So it was more about collecting the points rather than being of assistance. They would go on courses to register and leave in the boring bits”*

*“It feels more like a framework and supportive so you can structure what you are doing better. Rather than feeling like an add-on that you have to do”.*

*“It's better for me and the way I work. All this attending courses and hours has gone and I can read and research and count as CPD. It's freed up some of my time as I don't have to think about courses and conferences. There is an irony in that all this unpaid work reading around a case that I have been doing for years is now CPD. Although it's still unpaid”.*

*“The CPD I do is relevant but the new scheme has not helped that as I have always done it”.*

*“I appreciate that all these areas are important but I developed my inter-personal skills years ago and, given where I now am - senior position - I just don't have time to do these on top of my core work and CPD”.*

## **The future**

Most interviewees had no comments to make relating to what could be done to improve their participation in the CPD scheme but of those that did – 14 interviewees – the largest group (6) want to go back to the old system.

Other themes mentioned by more than one interviewee:

- Reduce the administration and paperwork for barristers
- Provide guidance on the new scheme

## **3.5 Chambers Discussion Groups**

### **Introduction**

As the final stage of the research, two discussion groups were set up with staff from chambers and some barristers to obtain feedback on the role of chambers and chambers staff, if any, in the new CPD scheme. Just seven individuals participated so the results can only offer a glimpse of how chambers are involved. The two groups were: the chambers manager, librarian, and two barristers from a multi-disciplinary chambers based in the Midlands; and three practice managers from chambers in London and the North of England.

### **Key points**

#### **Information and guidance on the new scheme**

There was support and advice from chambers managers and other staff at the start of the new CPD scheme, and mainly details of how the new scheme would work. There is limited on-going support around the new scheme.

#### **Selected comments:**

*“We ran sessions when the new CPD requirements were introduced to make sure barristers were clear about what they had to”.*

*“I produced a short webinar at the start of the new scheme explaining the new CPD requirements and we also had some informal group sessions with some barristers”.*

### **Regular alerts and updates**

Some still offer regular advice and guidance, mainly details of relevant activities and events, while others have largely left barristers to their own devices.

#### **Selected comments:**

*“I know that the clerks in some areas still pass on details of potential courses and webinars if they think they are relevant but it’s informal and some clerking teams in some practice areas are better than others to be honest”.*

*“In the old way of doing it we ended up pushing quite a few barristers especially near the end of the practice year when they were trying to get their hours. One or two barristers have come to us and asked for information on courses and conferences in the new scheme but not many so I assume the rest are OK with it”.*

*“We still produce weekly emails which are tailored to different practice areas. These are produced by our Legal Support Service and they do include any updates when we find them about new CPD things”.*

### **Internal seminars and events**

Most chambers in the two groups have a regular programme of seminars and other events that their barristers can count as CPD.

#### **Selected comments:**

*“We have about 30 seminars a year and a couple of conferences which are open to our barristers and others – solicitors, other barristers – and these relate to developments in specific practice areas mainly”.*

*“Yes, we have run a few courses on diversity and stress management but these are run internally”.*

### **Comparison with the old CPD scheme**

Managers in chambers say that the administrative work linked to the new scheme is much less than under the old scheme. Some are no longer keeping detailed records of CPD activity for barristers, which they kept before to track CPD hours. Managers are leaving it to barristers to keep their own records and to keep on top of their CPD requirements.

#### **Selected comments:**

*“It’s a large multi-disciplinary practice with over 130 members so the CPD requirements across chambers are extremely varied. In some ways the new CPD approach is OK for us as it has pushed more responsibility onto individual barristers. In the old scheme we supported barristers by clerking teams in practice areas passing on details of CPD courses and so on, we reminded barristers to keep up to date, and we kept records for every barrister on their CPD”.*

*“The onus is now on the barristers to keep their own records and to ensure that they are up to date with developments in their own practice areas and generally. So I suppose we have taken this as we don’t have to give them as much support. I should say although we no longer keep any CPD records for the barristers, we still retain the signed attendance sheets for our seminars so that we have a record of which barristers attended”.*

*“We used to do a lot more admin-wise such as taking barristers through what counted as CPD for example but with the removal of accredited providers we don’t do this that much now”.*

### **Overall view of the new scheme**

Chambers managers have mixed views on the perceptions of, and attitudes to, the new scheme amongst barristers. Some report some resentment concerning the new scheme, primarily relating to the fact that the BSB is treating barristers like children or are being too heavy handed. Others feel that barristers still need a helping hand and guidance to understand the new scheme, while others feel that it is working quite well.

#### **Selected comments:**

*“I can see why a CPD regime would work better in a law firm where professionals are employed by the firm and have to uphold a certain level of service and standards to maintain the firm’s service. So solicitors have to show they have done a certain amount of CPD. It works there but not sure it is the same for self-employed barristers and do they need the discipline of a specific CPD programme? I know it’s not as rigid as it was but I know there has been some resentment from some about being treated like schoolchildren”.*

*“There is a definite feeling amongst some here that the BSB are being too heavy handed. Statements like “you have failed” or “you have not complied” are not helpful”.*

*“I still think some barristers need to be guided. It’s not what they joined the Bar for and some don’t get it”.*

*“Well I am not the one having to do the CPD but from what I get from the members is the new CPD just beats the old system because it’s flexible regarding activities that count as CPD. If you are asking about the impact on my work then it’s helped as I am not having to find activities for some. There was always a feeling that the buck would stop here if we had barristers not completing the mandated 12 hours but now it’s with them”.*

*“As I said before we have a small set and quite a few working away from the chambers. We have left barristers to their own devices really and it seems to be working”.*

## 4. Summary and implications

The commitment to a new approach to CPD was set out in the LETR and the BSB has adapted this new more flexible, outcomes-based approach. This research shows that most barristers are positive about the fundamentals of the new CPD scheme, ie the wider choice of CPD content, removal of prescribed hours. In addition, most accept that it is more relevant to the way they practice compared to the previous scheme.

Where there are real concerns these are centred on two aspects of the new CPD regime: the amount of paperwork barristers need to complete to show compliance, and finding time to complete this. There is also some confusion over what is expected from the BSB in relation to planning individual learning objectives and reflecting on the CPD completed.

Some responses from the online survey and the telephone interviews also suggest that some barristers are not clear about what counts as CPD in the new scheme. The BSB sees CPD as work undertaken over and above the routine work a barrister has to do to practise on a day-to-day basis. However, there are barristers that are using the new scheme to read and research updates on case law when a new case is taken on. While these limitations are explained in the BSB's guidance on the new scheme it may be that an update on what does count and what doesn't would be useful.

The use of social media may also need to be explained more clearly. The use of social media for CPD activities has clearly increased since the new scheme was introduced but there are some barristers that suggest that they are following individuals on platforms such as Twitter and this does not count as CPD.

The BSB website guidance states that "You should prepare a written CPD Plan setting out your learning objectives and the activities you propose to undertake during the year" and more detailed guidance on the site explains the level of detail required. A key problem identified in the research is that many barristers cannot say what their activities will be during the year, even in general terms, as these will depend on case work and law updates that will emerge during the year. Despite the fact that the BSB guidance states that changes can be made during the year, there is clearly some confusion about this and, again, this should perhaps be explained again.

Reflection is causing confusion to some, and some stress to others. While most understand the concept of reflection actually putting this into words seems to be proving difficult for some. More guidance on how to write this submission would be useful, with some good practical examples of reflection. This confusion over reflection was also apparent from the spot checks completed by the BSB.

A large majority of barristers in the online survey had used the guidance about the new scheme on the BSB website and most had found this useful. However, it was used primarily around the time the new scheme was introduced and hardly anyone in the survey or the interviews state they regularly use this source. The detailed BSB guidance document on the website on the new CPD requirements runs to 28 pages

and there is a considerable amount on learning objectives, with some examples, but very little on what is required for reflection.

If, as it appears, the detailed guidance is not being referred to by many now then more regular guidance updates from the BSB would be useful. These should be short, easy to read, and with examples of good practice. In particular, updated guidance on planning and reflection should help to alleviate some of the concerns that practitioners have in these areas.

The role of chambers managers and administrators in supporting CPD activities varies from one chamber to another and this is to be expected given the varying sizes and practice areas of chambers. However, they are identified as a key source of support at the start of the new CPD scheme. They can also be a regular source of information and guidance but it seems, from some comments in interviews and group discussions, that some administrators and managers have reduced their involvement in the new CPD scheme compared to the previous scheme. Again, there are likely to be examples of good practice regarding support and guidance which could offer good models to other chambers.

## Annexes

### Annex A: literature review

#### The Legal Services CPD Context

New approaches to CPD have been explored and implemented by the BSB and other legal regulatory bodies following a report of the Legal Education and Training Review (LETR)<sup>5</sup> which highlighted weaknesses in the CPD system in use, and recommended changes. In January 2011, the Solicitors Regulation Authority (SRA), the Bar Standards Board (BSB) and ILEX Professional Standards announced the establishment of a joint fundamental review of the legal education and training requirements of individuals and entities delivering legal services. It represented the first sector-wide review of legal services since the Ormrod Report of 1971<sup>6</sup>.

The general conclusions of the LETR were that:

“While there is high quality training available and many practitioners take their commitments seriously, there was some considerable cynicism and doubt amongst respondents about the effectiveness of current, usually hours-based, continuing professional development schemes. The majority of CPD schemes in the legal services sector are out-of-line with recognised best practice in professions generally and by comparison with ‘leading edge’ schemes for lawyers in other jurisdictions. A number of barriers to effective participation, including cost, the exclusion of useful, often informal, learning activity, and difficulties for sole practitioners, small groups and organisations employing members of different professions, were identified. The potential importance of CPD to ensuring continuing competence highlights the need to create schemes that are effective at supporting useful learning and reflection, and provide appropriate quality assurance. Effective practice points to the use of an entity-led approach to quality assurance, with developmental audits as a way of ensuring schemes are properly embedded within the organisational environment. The disciplinary functions of audit should be secondary”.

The key recommendations regarding CPD were:

- The adoption of predominantly cyclical or benefits-led models of CPD, requiring participants to plan, implement, evaluate and reflect annually on their training needs with an emphasis on a wide range of CPD activities, including non-verifiable learning.
- Schemes may continue to prescribe minimum hours, but this should not be obligatory so long as the decision to move away from prescribed hours is considered justified on a risk-based analysis, and there is a mechanism for assuring that a

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<sup>5</sup> Bar Standards Board, ILEX Professional Standards, Solicitors Regulation Authority (2013) *Setting Standards – The Future of Legal Services Education and Training Regulation*

<sup>6</sup> Ormrod D (1971) *Report of the Committee on Legal Education*

sufficient level of intentional, meaningful learning takes place over the review cycle. Sufficient in these contexts means appropriate at that time to the needs of the learner, his/her clients, and (where relevant) employing organisation.

- Practitioners should be encouraged to demonstrate an appreciation of the role played by informal learning in their development, and to make the most of informal learning opportunities by converting them into structured learning activities. CPD schemes should not, however, enable practitioners substantially to satisfy their CPD obligations by reference to unstructured informal learning.
- All completed CPD activity for the cycle should be recorded, not just the activity required to comply with any minimum requirement.
- Regulators should support their regulated communities by providing initial training, guidance and tools to assist in maximising the value of the required CPD activity.
- Where this is feasible in resource terms, an online system should be created by the regulator for the submission of CPD plans and logs (where this is not already present). This system could be linked, where possible, to any learning portfolio or other records created as part of initial workplace learning. This type of online space thus provides a reviewable record of lifelong professional learning that can constitute a developmental tool in its own right.
- Supervision and primary audit of CPD plans may be delegated to the entity level. Provision should however be made for the annual random audit of CPD plans by the regulator, and for effective trigger powers to review CPD across an entity where random audit highlights reasonable cause to investigate.

The LETR report added that while a new CPD scheme should give legal professionals more flexibility in their CPD choices it also emphasised that there should be tough sanctions for anyone not complying with the new CPD regime. “There must be a tailored and focused CPD system, which gives solicitors the flexibility to drive their own learning and development, but the structure to ensure that they get as much alternative models of CPD, such as ‘benefits models’, attempt to create a culture of individuals leading their own development programmes instead of being told what to do by their employer or regulator. The onus is placed on lawyers to identify personal objectives and provide hard evidence to demonstrate delivery against these objectives on an annual cycle. The corollary is that these increased freedoms are matched with tougher sanctions in the event of non-compliance, with code of conduct obligations providing a hook. Regulators too should be held to account for the success of their CPD regimes by a requirement to publish a report showing progress against performance indicators”.

### **CPD in UK Legal Services**

Here is an analysis of the main CPD schemes operating in the UK legal services sector.



**Bar Standards Board (BSB)**

In May 2015, the Bar Standards Board (BSB) published a consultation paper on its proposed new CPD scheme<sup>7</sup>. The paper stated that “We will assess compliance not with reference to whether a barrister has completed a defined number of hours but whether the activities they have carried out are relevant and appropriate to satisfy the regulatory requirements in the CPD Rules and Regulations”. The paper also explained the assessment process noting that each year a sample of barristers would be selected to assess their CPD records and the sample would be selected “both randomly and by targeting (where for example, there is evidence barristers are not complying with CPD or other regulatory requirements)”. Further details:

- trained staff will assess each CPD record of barristers in the sample. They will also review any other relevant material about the barrister such as previous CPD records;
- they will check that barristers have appropriately planned their CPD with regard to the four recommended knowledge areas outlined in the Planning section;
- they will check the relevance of barristers’ CPD activities to the learning objectives and area(s) of practice; and
- they will check the barrister has reflected on how the CPD activities have met the learning objectives

In Spring 2016, the BSB published a report<sup>8</sup> summarising the responses received to the above consultation paper. The report also responded to some of the comments made by respondents and to demonstrate how the Board’s policy position had evolved in light of the consultation. The report followed a pilot stage for the new CPD scheme between June 2015 and March 2016 which involved 76 barristers.

Later in 2016, seven more responses were obtained from six organisations and one barrister:

The Bar Council  
Government Legal Service (GLS) Bar Network  
Youth Justice Board (YJB) for England and Wales  
Council of the Inns of Court (COIC) Training Working Group  
Chancery Bar Association (ChBA)  
The London Common Law and Commercial Bar Association (LCLCBA)

Between 56 and 84 individual responses were obtained for the Spring 2016 report to the eight questions asked on specific areas of the proposed new CPD scheme and,

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<sup>7</sup> Bar Standards Board (2015) *Future Bar Training – CPD, Consultation Paper on the Proposed new CPD Scheme for the Bar*

<sup>8</sup> Bar Standards Board (2016) *CPD – Consultation Reports*

overall, comments were positive. The main concern was what exactly was expected of barristers during the Planning and Reflection stages. Other key themes:

- 57 per cent agreed that the old CPD was overly prescriptive.
- 72 per cent agreed that requiring a barrister to plan their CPD activities at the start of the year would help CPD activities to be more relevant to a barrister's needs.
- 64 per cent agreed that requiring a barrister to reflect on their CPD activities at the end of the CPD year would make sure CPD is relevant and address a barrister's future needs.
- 68 per cent felt that the guidance about the new scheme was not adequate (this led to a revised version of the guidance)
- The Consultation paper proposed a change in the way that CPD was regulated and assessed; compliance would be assessed not with reference to whether a barrister has completed a defined number of hours but whether the activities they have carried out are relevant and appropriate to satisfy the regulatory requirements in the CPD Rules and Regulations. 64 per cent agreed with this new approach.

In October 2016, the BSB made an application<sup>9</sup> to the Legal Services Board (LSB) seeking the approval of the LSB for changes to the BSB's Continuing Professional Development (CPD) rules, and consequential changes to the requirements that Established Practitioner Programme (EPP) barristers need to comply with in order to complete.

Also in October, various roadshows explaining and discussing the new CPD scheme were held with groups of barristers and other Chambers staff in Bristol, Leeds, and London<sup>10</sup>. A common theme across all three groups was the range of learning activities that would probably be acceptable under the new CPD scheme, for example typing courses, extensive research for a new case or a new practice area, exploring the culture of a country if a barrister had many clients in that country, reading up on money laundering etc.

Following the consultations and above application to the LSB, in December 2016 the BSB published guidance and a template<sup>11</sup> to help practising barristers of more than three years' standing comply with the new CPD scheme, which started on 1 January 2017. The guidance states that the new scheme changes the emphasis from the amount of CPD undertaken to the relevance of the learning and development to the barrister.

In order to comply with the new scheme, barristers will be required to:

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<sup>9</sup> Bar Standards Board (2016) *Application to the LSB for the Approval of Changes to the Bar Standard Board Handbook Rules in Respect of Continuing Professional Development Requirements*.

<sup>10</sup> Bar Standards Board (2016) *CPD Roadshow Notes (BSB internal documents)*

<sup>11</sup> Bar Standards Board 2016) <https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/continuing-professional-development-from-1-january-2017/>

- REVIEW: prepare a written CPD plan setting out their learning objectives and the activities they propose to undertake during the year.
- RECORD: keep a written record of the CPD activities undertaken over the past three years including their reflection on the CPD they have undertaken, any variation in their plans and an assessment of their future learning objectives.
- REFLECT: reflect on their planned and completed CPD activities to assess whether they have met their objectives.
- REPORT: declare to the Bar Standards Board annually that they have completed their CPD. This is completed as part of the authorisation to practise process, when practising certificates are renewed.

From January 2017, there is no longer a requirement to undertake a minimum number of CPD hours every year and no barrister is required to undertake accredited CPD courses.

Detailed guidance is available on the BSB's website<sup>12</sup>.

Reporting on the BSB's pilot CPD scheme, an article in the Law Society Gazette noted that of the 69 records that have been assessed to date by the BSB, 61 were fully compliant while eight barristers were being asked for further information about the courses they had completed. The report of the pilot said: "The pilot participants completed an average of 28 CPD hours. This is more than double current requirements. However, barrister participants recorded significantly higher levels of activities that would not currently be counted as CPD. Principally this includes reading and over four hours of writing and editing. It also includes claiming more<sup>13</sup> preparation time than would currently be calculated".

The BSB report concluded that as a whole the barristers engaged with the process in the manner in which it was intended. "In particular barristers made use of the additional flexibility afforded to them by undertaking atypical CPD activities, but without reducing the number of hours undertaken". The main area for improvement, it said, was the need to better plan the learning objectives of a particular piece of CPD.

### **Solicitors Regulation Authority (SRA)**

The SRA published a consultation document on a proposed new CPD scheme for solicitors in 2014<sup>14</sup>. The document stated that "there is a broad consensus that the SRA's current approach to CPD is largely a "tick box" exercise requiring individuals to certify that they have undertaken the mandatory number of hours of CPD with no real focus on the quality or appropriateness of the professional development that has

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<sup>12</sup> Bar Standards Board (2019) *Continuing Professional Development (CPD) – Guidance for Barristers*

<sup>13</sup> Reyes E *Education and Training: taking solicitors' word for it* Law Society Gazette 26<sup>th</sup> September 2016

<sup>14</sup> Solicitors Regulation Authority (2014) *Training for Tomorrow – A Consultation Paper*

been undertaken. The current system imposes a regulatory burden on individuals and the SRA with no readily identifiable regulatory benefits”.

The consultation was launched on 5 February 2014 and closed on 2 April 2014. It was supported by a series of events including roadshows, meetings with representative groups, webinars and individual meetings.

In the consultation document, three CPD options were offered and respondents were asked to comment on the strengths and weaknesses of each. Option 1 was the SRA’s preferred option.

**Option 1**, involving a shift from procedural compliance to competence under which the SRA would revoke the current CPD scheme and rely instead on existing provisions in the Handbook requiring a proper standard of legal practice and of training and supervision. Option one would be integrated into SRA’s wider regulatory framework and supported by non-mandatory guidance.

**Option 2**, in which SRA would replace the current CPD scheme with a new mandatory requirement to reflect on practice and implement a development plan without a mandatory hours requirement; and

**Option 3**, in which SRA would retain the current requirement to do a minimum number of CPD hours but would require the training to relate to current or anticipated legal practice and recognise a wider range of development activity.

In May 2014, the SRA announced the outcome of its consultation on the reform of the CPD regime for solicitors<sup>15</sup>. As noted above, the consultation was designed to identify the advantages and disadvantages of the range of options rather than to represent a vote on the preferred option, but a number of respondents indicated their preferred option. Of those that did, the largest group, and a majority (over 50% - 35 respondents) suggested they would prefer Option 3 to be implemented, 16 per cent (10 respondents) indicated they would prefer Option 1 to be implemented and 9 per cent (6 respondents) indicated they would prefer Option 2. 20 per cent (13 respondents) did not indicate a preferred option for implementation. Those that preferred Option 1 tended to be in-house solicitors and individual practising solicitors and those that preferred Option 3 were local law societies, representative organisations, training providers, training and development specialists and legal researchers.

Despite a mixed reaction to the SRA’s preferred option, the SRA Board adopted its recommended plan for the reform of the CPD system in 2014. Solicitors now have control over how much training they do (including doing none) and can gain new knowledge in any way that suits them. A minimum of 16 hours CPD, a restricted list of qualifying training activities, and an approved list of CPD providers have all gone. Solicitors were able to choose to move to the new CPD scheme from April 2015 and it became applicable to all solicitors from 1 November 2016.

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<sup>15</sup> Solicitors Regulation Authority (2014) *Training for Tomorrow – Consultation Responses*

A guide to the new scheme was published in September 2016<sup>16</sup>. Solicitors are expected to review their learning needs and address them through CPD activities. They are then asked to reflect on the learning and look at ways they can incorporate this into their practice. This should, in turn, lead to a further review of any other learning needs.

In May 2016, the SRA reported on a survey of law firms<sup>17</sup>: almost half of those law firms that responded to the survey had already moved to the new CPD approach. Of these, 64.3 per cent said there was no cost in aligning it with their firm's existing systems. Three quarters (75.4%) said adopting the new approach took just three months or less.

The SRA has developed an online toolkit to help its members adapt to the new system<sup>18</sup>. It offers general information on the new scheme plus specific guides on “how to plan learning”, “how to address learning needs”, “how to reflect”, and “how to record and evaluate”.

An article in the *Law Society Gazette*<sup>19</sup> in 2016 reported on the SRA survey of law firms and the BSB’s pilot scheme and also included comments on the new SRA scheme from the SRA’s chief executive and practitioners.

SRA chief executive Paul Philip said: “This approach is about protecting the public by making sure solicitors remain competent, ethical and up-to-date. We take this obligation seriously and will continue to require all solicitors to make an annual declaration about their continuing competence. We recognise that each individual solicitor and firm is different and will have different approaches to learning and development. We believe that removing the blanket 16 hours requirement will reduce the cost of regulation for some solicitors and their employers, while encouraging meaningful continuing professional development”.

In July 2014 an article from *Practical Law Property*<sup>20</sup> described the advantages and disadvantages of the new SRA scheme.

### **Advantages highlighted:**

**Flexibility and Relevance** – “The freedom for every solicitor or firm to decide what training to do, how to do it and when it is necessary will be liberating. Individuals will be able to fit their training in at convenient moments. They can include reading, listening to podcasts on the train or watching a webinar in bed. This opens up the possibility that reading and researching into a topic for the purposes of a new matter

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<sup>16</sup> Solicitors Regulation Authority (2016) *A New Approach to Continuing Competence Guidance*

<sup>17</sup> Solicitors Regulation Authority (2016) *News – Continuing Competence*

<sup>18</sup> Solicitors Regulation Authority (2016) *Continuing Competence Toolkit*

<sup>19</sup> Reyes E *Education and Training: taking solicitors’ word for it*. *Law Society Gazette*, 26<sup>th</sup> September 2016

<sup>20</sup> *Practical Law Property* (2014) *SRA Reform of the CPD System for Solicitors*

will count towards continuing education. So will sharing that knowledge with other lawyers in a firm – something that the larger organisations do regularly”.

**Cost reduction for practitioners** – “For those keen to economise on the cost of training, it will not be necessary for any training to be done face to face (contrast the 4 hours required currently)”.

**Improved tailoring** – “The other advantage is that the training can be tailored to what the particular solicitor does. For some, training on management skills, or business skills will be ideally suited (something which would not have necessarily qualified under the existing CPD system)”.

**Disadvantages highlighted:**

**Public perception** – “The most potentially damaging is the public perception of the move away from any minimum expectation of continuing education. There is a strong possibility that the public will compare this laissez faire attitude unfavourably when contrasted with the standards imposed by the professional membership bodies of the other professionals with whom they come into contact, such as doctors, dentists, accountants and HR professionals. All of these impose a minimum period of continuing education each year, designed to keep the public safe from incompetence”.

**Increased reflection and record keeping** – the article asks if solicitors will have time to do this.

**Reduced investment in training** – “In practice, the bigger risk is that firms and individuals will spend less on training. Where profit margins are under pressure or there is a pressing need to invest in something else to keep the business afloat, it will be even easier than before to move money across from the training budget”.

Concerns that the new CPD regime could lead to a dilution of professional development for solicitors were explored in a *Law Society Gazette* article<sup>21</sup>. The two key issues raised were:

- Financial constraints in some practices might tempt some to take short cuts and, without a minimum hours’ requirement or some tough sanctions, there could be a real danger that investment in training will drop and standards atrophy.
- The suggestion that most lawyers should engage in “reflective learning” is to assume too much. In the main, most won’t have a clue what that means.

However, one positive noted in the article is that most research shows that individual research, on-the-job learning, and learning from experience are the best forms of learning, but these do not count under the current system. They will under the new regime.

The article had a quote from Pamela Henderson, senior lecturer in law at Nottingham Law School, who led the review of CPD for the SRA which was fed into the LETR. She said “the new regime will remove the current barriers of costs, time, relevance and location because practitioners will only have to undertake as much CPD as is necessary for them each year and they will be able to do it in whatever way works for

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<sup>21</sup> Langdon-Down G *Legal Education after Hours*. *Law Society Gazette*, 21<sup>st</sup> July 2014

them. But it will need a ‘robust’ cycle of planning, implementation, evaluation and review for it to work as desired”.

There was also some criticism of the new CPD regime from the Commerce and Industry Group representing in-house lawyers<sup>22</sup>. The group surveyed members to determine whether and how forthcoming changes to CPD would affect the training needs of in-house lawyers and 82 per cent of respondents expressed doubts about the SRA’s toolkit’s relevance, saying that an in-house toolkit would be helpful as “the SRA focuses very much on private practice still”.

In July 2019, the SRA published a report of a survey<sup>23</sup> looking at how solicitors and law firms have responded to the new scheme. The findings are based on: a thematic review of the work of 20 firms; an online survey that attracted 500 responses; the SRA’s own data including the annual declarations made to the SRA about continuing competence in practising renewal applications. The report states that the introduction of a revised approach to maintaining and developing skills among solicitors has been well received by law firms. The survey notes that 40% of law firms report that they have increased the amount of learning and development support offered to their solicitors. Half of firms (52%) say that levels of learning and development have remained unchanged, with just 9% reported a reduction.

Other key feedback on the continuing competence approach included:

- Most firms and solicitors implemented the new regime without significant problems
- The new approach is seen as more flexible and able to adapt to individual needs and specialisms
- Most firms reported a reduction in the cost of learning and development by better focussing activity on specific roles and teams
- Some solicitors claim it is difficult to make time to reflect, identify and address their learning and development needs

The SRA did find that “a small number of solicitors are consistently failing to return their continuing competence declaration, or in some cases are making a nil return. It will be writing to these individuals asking them to explain why this is the case. If there is a failure to comply with regulatory requirements, the SRA will consider disciplinary action”

## **CILEx**

In July 2017, CILEx launched a consultation on their proposed CPD scheme<sup>24</sup>. Starting in the year October 2017 to end-September 2018, the overwhelming majority of CILEx regulated members are on a CPD scheme which is focused on outcomes. The second CPD scheme is an hours-based scheme which also requires individuals to complete one additional mandatory outcome in professionalism (ie

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<sup>22</sup> Fouzder M *In-house Sector out of CPD Loop*. Law Society Gazette, 29<sup>th</sup> September 2014

<sup>23</sup> Solicitors Regulation Authority (2019) Understanding implementation of our approach to continuing competence

<sup>24</sup> CILEx (2017) *Consultation: proposal to amend the CPD regulations and CPD handbook*

CPD to support a specific professional role) and this scheme is relevant to Associate Members only.

Under the outcome-based CPD scheme, CILEx Regulation will undertake a sampling exercise annually to assess how members meet their CPD obligations: “During the sampling process we will review whether the outcome benefited your professional knowledge or skills, and whether it was relevant to your role”.

Each year CILEx Regulation plans to sample a random 2.5 per cent of members from each discrete part of the regulated community. Those selected will be asked to supply additional documentation in support of what has already been entered into a member’s online logbook, and the information supplied will be used to review whether the outcome benefited a member’s professional knowledge or skills, and whether it was relevant to their role. From the 2.5 per cent of the originally sampled members, 10 per cent will be selected for an in-depth discussion about their CPD record and their experiences of the scheme.

### **Council for Licensed Conveyancers (CLC)**

The CLC Council approved a policy shift in their CPD framework in 2016 and, in January 2018, the CLC published a consultation paper<sup>25</sup> for its licensed members on the proposed changes. As with most other legal regulators, the CLC moved from a system based on hours of CPD undertaken to an outcomes-based scheme but noted that “a scheme which is purely outcome-based can be difficult for regulators to monitor”. The CLC stated that “For this reason, whilst predominantly outcomes based in nature, the new CPD scheme will contain an ‘input’ component. Namely, that CLC Lawyers will be required to include a minimum of 10 entries on their CPD record”.

An entry on a CPD record is essentially a note of knowledge or skill that the CLC Lawyer has acquired following the CPD activity that was undertaken – this may be something that an individual did not know before or an area of law or a skill relevant to their practice that they have refreshed. CLC Lawyers will also be allowed to claim more than one entry for the same CPD activity if they have acquired more than one discrete area of knowledge or skill from the activity undertaken.

Also, operational risk was introduced as a compulsory element into annual CPD requirements. The CLC proposed that one entry on the record each year should be on the subject of operational risk and provided a recommended list of some of the most significant operational risk areas within Conveyancing and Probate, eg Data Protection Act, money laundering, cyber security etc. The consultation also noted that individuals would also be able to record learning from their fee earning work, for example, research that they need to complete for a client in a new or unfamiliar area of law.

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<sup>25</sup> Council for Licensed Conveyancers (2018) *CPD Consultation*



### **Intellectual Property Regulation Board (IPReg)**

All registered patent and trade mark attorneys in active practice are required to achieve the minimum of 16 hours CPD in order to remain registered and to self-certify that they have met this requirement when renewing their registration<sup>26</sup>. Compliance may be monitored from the records of a random sample of registrants each year to substantiate the 16 hours figure.

Attorneys are required to undertake CPD relevant to their practice. IPReg does not require specific numbers of hours to be devoted to particular subjects. Instead, “attorneys can determine for themselves, bearing in mind their existing skills and the nature of their practice, the most appropriate subjects where they should undertake CPD, taking account of their responsibilities and the expectations placed upon them”.

### **Bar of Northern Ireland**

Barristers are required to undertake 12 CPD hours per year and can use a combination of learning elements from courses and content from accredited providers, private study, by writing articles and books, working on bar committees, and working as an external examiner.

### **Law Society of Northern Ireland**

The CPD scheme was introduced in 2004 and each year all solicitors practising in Northern Ireland must undertake 10 hours of CPD in group study. Three of the ten hours must include client care and practice management. From January 2017 all Principals, Consultants and Assistants in private practice (PPC, PPP and PPAs) are required to complete two hours of compulsory risk management CPD.

Furthermore, all solicitors practising in Northern Ireland, who complete any type of conveyancing transaction, are required to undertake three hours of Compulsory Conveyancing Group Study.

### **Law Society of Scotland**

The Law Society of Scotland still requires solicitors to undertake a minimum of 20 hours CPD in each practice year<sup>27</sup>. Of those minimum 20 hours, a minimum of 15 must be verifiable CPD. Up to 5 hours may be by private study and as of the CPD year commencing 1 November 2018, one hour of risk management CPD must be included<sup>28</sup>. The Society has identified the following areas as worthy of risk management CPD: Anti-money laundering; Complaints handling and complaints

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<sup>26</sup> Intellectual Property Regulation Board (2018) *Manage Your Professional Development*

<sup>27</sup> Law Society of Scotland (2018) *CPD Requirements*

<sup>28</sup> Law Society of Scotland (2018) *New Compulsory Risk Management CPD Requirements*

avoidance; Contingency planning; Cybersecurity; Prioritisation, time management, workflow and processes; Terms of business.

As well as the hours requirement solicitors are required to plan, record and reflect upon their CPD activity each year.

### **Society for Trust and Estate Planners (STEP)**

STEP was one of the early adopters of an outcomes-based CPD system in 2014<sup>29</sup> replacing a requirement for 35 hours of prescribed CPD activity with a more flexible approach where members plan their own requirements, keep a record of CPD, and reflect on their activities. Up to 5 per cent of members are audited each year.

### **General CPD Trends and Policies**

#### **Background**

Some of the CPD changes in recent years have been based around theories and practices from academic learning and this is particularly true for the integration of reflection and reflective thinking into new CPD schemes. A review of the literature on reflection in learning<sup>30</sup> looks at the literature, the common meanings of the word, and its value in practical ways of improving learning and professional practice. It emphasises some of the difficulties faced in making sense of the activity of reflection. It notes that reflection and reflective practices can mean different things and take different forms across disciplines and professions, and even the words used to define reflection can be confusing.

The book states “For example, the following words can apparently be synonymous with reflection - reasoning, thinking, reviewing, problem solving, inquiry, reflective judgement, reflective thinking, critical reflection, reflective practice”. It notes that “The work on reflection in the context of practice - reflective practice - originated mainly in the professions of teaching and nursing”, but adds that there has been little integration or exchange of practices, and most professional development training incorporating reflection has been developed in isolation, ie in a specific profession, discipline.

Assessing the value of learning and measuring its impact have also been the subject of academic research and discussions, focusing particularly on a model known as The Kirkpatrick Model (there are other broadly similar models led by The Phillips Model and Brinkerhoff's Success Case Method and many others).

A conceptual framework for CPD outcomes assessment can be derived from Kirkpatrick's model which assesses training effectiveness by measuring four distinct levels: participants' satisfaction; participants' knowledge, skills, or attitudes; transfer of learning to practice (ie, behaviour); and organizational outcomes such as

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<sup>29</sup> Society of Trust and Estate Practitioners (2014) *CPD Policy – Guidance and Resources*

<sup>30</sup> Moon J (2013) *Reflection in Learning and Professional Development – theory and practice*

productivity and quality<sup>31</sup>.

Here are more details of the four levels, which get progressively more important:

- 1. Reaction:** How employees react to the training they receive. A common way to measure this is a survey after a training – what did the participant think of the training they received? Did they find it useful?
- 2. Learning:** Here's what the employee actually learned from the training. Common ways to measure this are post-tests or hands-on assignments that demonstrate the person learned a new skill.
- 3. Behaviour:** Next is to discover if participants actually used those new skills in their day-to-day work, ie incorporated it into their behaviour. Common ways to measure this are in-field inspections or evaluations from participants' managers.
- 4. Results:** Finally, what did this changed behaviour result in? For example, if you had a management training, have your managers improved? Have employee surveys shown an improvement in manager effectiveness, thereby reducing retention?

The Kirkpatrick model has been applied most widely in the private sector where learning and development professionals have tried to use it to measure, for example, the return on investment (ROI) of training or improvements in on the job performance. It has also been used a little in the teaching and medical professions but it is less suited to these areas where purely business measures such as ROI are less applicable.

The main criticism is the simplicity of the Kirkpatrick model on a practical level with many practitioners struggling to apply the model fully. Since it offers no guidance about how to measure its levels and concepts, users often find it difficult to translate the model's different initiatives. Most are able to gather level 1 and level 2 feedback and metrics with relative ease, but find the difficulty, complexity and cost of conducting an evaluation increases as the levels advance and become more vague. A survey<sup>32</sup> found that only 5 per cent of organisations using the model measure ROI (and they do so for a small percentage of their programmes) and fewer than 10 per cent regularly measure business impact. "Paradoxically, therefore, it is precisely the elements that Heads of Learning and Development want to measure, that they end up measuring the least". Even if it were possible to measure all four levels, the resources required to do this is prohibitive for most organisations. So the Kirkpatrick model has been used as conceptual framework to underpin the rationale behind some CPD schemes but its practical use as an evaluation tool is debatable. The remainder of this section provides an analysis of the current position of CPD schemes in professional sectors, and a review of any surveys or research undertaken.

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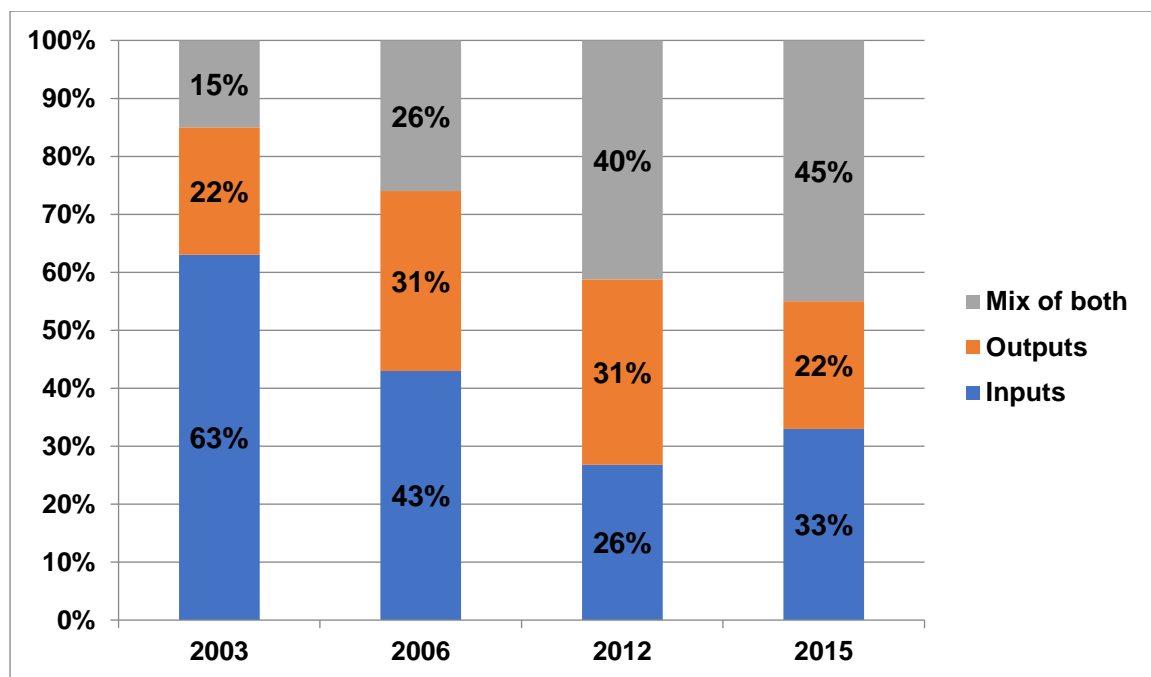
<sup>31</sup> Essays UK (2017) *The Kirkpatrick Model of Evaluation*

<sup>32</sup> Bates R A (2013) *A Critical Analysis of Evaluation Practice*

### Association for Project Management (APM)

A 2016 report from the Association for Project Management (APM) <sup>33</sup>reviews the growth of CPD in the professions and the way that CPD measurement and assessment has been switching from inputs to outputs, and particularly towards a combination of input and output approaches.

**Figure 14: CPD Schemes – Percentage of Measures Used**



Source: APM

It notes that outputs may be gathered at three stages: planning, evaluation and reflection. Those with pure output measures emphasise that any activity can be regarded as CPD as long as the individual considers that activity in terms of evaluating and/or reflecting on it, and/or incorporating it into planning for future activities. In some sense, it is not what you do, but rather what you do with what you do, that counts as CPD.

The report describes a typical CPD cycle model:

Planning	How can I learn?
Action	Learning/implementation
Evaluation	What have I learned? How is it benefiting my practice?
Reflection on practice	What do I need to know?

<sup>33</sup> APM (2016) *The Growing Significance of CPD – Ensuring Professionalism in a Dynamic and Changing Workplace*

The report adds that “CPD measurement is constantly changing. Reflection has recently become of particular concern to professional bodies”.

### **CPD Standards Office**

The CPD Standards Office evolved from a research project that explored CPD in great depth. Launched at Kingston University Business School in 2010, the CPD Research Project used an online questionnaire to survey over 1,000 project managers, PAs and occupational psychologists about their experiences of CPD. In addition, there were over 40 interviews with professional bodies, employers, academics and training providers.

Based on feedback from the above groups, a key finding of the first phase was that the quality of most training and learning activities that individuals undertake for CPD purposes was exceptionally low. In addition, much CPD provision is inconsistent in its effectiveness. This uncovered a demand for an independent accreditation standard that recognised high quality CPD activities, which led to the establishment of the CPD Standards Office. The CPD Research Project is now in its third phase, and is currently working with a number of professional institutes and training providers to establish effective ways to recognise and reward CPD.

Other research findings include:

- Everyone does CPD, mostly as part of their job (eg searching the internet for information, learning from formal and informal team discussions, and attending conferences and seminars). But often many of these activities are not recognised as CPD.
- The overwhelming majority engage in CPD because they think it helps them to do their jobs better. A smaller number also think that CPD can advance their careers. 65 per cent of project managers, for example, were so convinced of the benefits that they had paid for some CPD out of their own pockets.
- Individuals who are more heavily engaged in CPD tend to be more committed to their work and to be ‘good citizens’ in the workplace (ie to go the extra mile for their colleagues and the organisation).
- There is a widespread view that employers do not provide enough time and financial support for CPD.

In 2017, the Office published a white paper *Hold on Tight – It’s a Roller Coaster of Change*<sup>34</sup> summarising some of the research findings and developments since then. While there is little evidence-based information on trends some of the comments are interesting:

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<sup>34</sup> CPD Standards Office (2017) *Hold on Tight – It’s a Rollercoaster of Change: the shifting landscape of professional development within the UK*

“Although many CPD policies are adapting to the pace of change, CPD still has a negative reputation and still associated, by many professionals, with ‘going on a one-day’ course who struggle to record learning outcomes and think the delivery is of poor quality”.

“There has been an ongoing debate for sometime within the professional membership organisation community around which type of CPD scheme is most effective, with some arguing an inputs based CPD scheme, ie a set number of learning hours per year, is simply a measure of activity and does not guarantee positive learning results. From a scientific perspective, it is notoriously difficult to measure learning impact and the tangible outcomes from individuals undertaking CPD activities. Hence, without hard empirical evidence, the input/output debate is indulgent, the simple requirement for an individual to undertake CPD - in whatever form or recording application –is a sensible, pragmatic approach that ensures that a level of on-going training is undertaken by a professional, which in turn keeps their skills and knowledge up to date”.

The CPD Standards Office has also created a directory of 11 key sectors and the CPD requirements in each of these sectors, including regulated sectors such as accountancy, financial services, legal, medical and healthcare, and social work<sup>35</sup>.  
<https://www.cpdstandards.com/sector-requirements/>

### **Friedman &Tinner**

Friedman &Tinner<sup>36</sup> found that in 2006, 47 per cent of those with output or combination measures collected evidence of planning, compared with 39 per cent for reflection. By 2015 54 per cent collected evidence of planning, but 76 per cent gathered evidence of reflection (Friedman & Tinner, 2016: 54).

Friedman & Tinner chart a move away from voluntary practice towards mandated CPD polices in professional membership bodies, and concur with the APM’s report that there has been an increase in measuring CPD by outputs.

They add that “The shifting CPD landscape introduces associated challenges: how to adequately resource CPD audit; what to do with CPD non-compliance; maintaining a consistent standard across member grades and across international networks; and meeting the difficulties of promoting, recording and assessing reflective practice. Other ‘evergreen’ issues - such as explaining the value and benefit of CPD - also continue to engage the sector”.

Looking ahead, the authors are confident that emphasis on evaluation outputs will increase in future: “This is also likely to involve more than evaluation of

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<sup>35</sup> CPD Standards Office (2018) *CPD Sector Requirements*

<sup>36</sup> Friedman A and Tinner L (2016) *CPD Support and Compliance Challenges*

consequences for learning. In addition to measurement of the outcomes of CPD on practice, we expect the proportion collecting evidence of client impact from CPD to rise substantially.....Underlying this trend, we anticipate that CPD will come to be defined more in terms of supporting client and employer impacts and the general public”.

Another trend identified is the significant increase in online CPD activities: “It may be the case that, not only will more training be undertaken in this way, but also that more social media activity that is not immediately recognisable as CPD will become incorporated clearly into CPD schemes. This will help support collaborative communities”.

### **Professional Associations Research Network (PARN)**

Every three years, the Professional Associations Research Network (PARN) publishes a survey of CPD, Education, and Professional Standards <sup>37</sup>. The latest survey report was in 2016 and the next is due later in 2019. The 2016 report identified two trends: CPD becoming mandatory across a growing number of associations and regulatory bodies; a move towards output measures. The survey also noted that there is a growing confusion amongst professionals about what CPD is stating that “this arises in part because of the variety of different definitions of CPD, and formulations of the aims it is meant to achieve. This then has consequences for what counts as CPD”.

The survey of 80 professional organisations and regulatory bodies found that 29 per cent had an input-based measure of their scheme, 19 per cent adopted an output-based measure, and 39 per cent had a mixture of both. The other 13 per cent did not measure.

When asked if they prescribed areas such as the content, topics, or number of hours, only 11 per cent said that one or more than one of these was prescribed. A clear majority – 63 per cent - said no, and 25 per cent stated that one or more than one of the areas was recommended.

Reflection has become the more common mark of CPD compliance: 76 per cent stated that evidence of reflection was now expected from CPD participants, 54 per cent required some evidence of planning, and 52 per cent some evidence of evaluation.

Many of those organisations that identified a shift towards an outputs-based CPD scheme added that determining a systematic approach to measuring outputs, and specifically reflection, was of particular concern.

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<sup>37</sup> PARN (2016) *Professional Body Benchmarking Survey: CPD, education & professional standards*

Almost three-quarters of those bodies with a mandatory CPD scheme audit their scheme and most select 1 per cent to 5 per cent of their members to audit. Most non-compliant members are given a second chance to comply. Some organisations are introducing risk-based audits, ie to control the resources required for an audit, members are selected who are likely to be non-compliant or where the consequences of non-compliance are severe.

The survey included some case studies from organisations that had changed their CPD schemes including the Law Society of Scotland (LSS) and the Solicitors Regulation Authority (SRA).

The LSS still has an hours-based mandatory CPD scheme but changes in 2011 required solicitors to plan their activity and evidence their planning. Reflection was also required. The LSS stated that “the introduction of reflection has come with some difficulties with some members suggesting they should not have to prove that they have reflected. When you codify something that some members were already doing, this almost generates resentment. A difficulty for the Society has been explaining the positive educational value of planning and reflections/justifications”.

### **Lindsay**

One of the few research surveys of professionals involved in CPD obtained feedback from 500 members of the Institute of Chartered Accountants in England and Wales (ICAEW) following the introduction of an outputs-based scheme. The survey was part of a study into lifelong learning<sup>38</sup> and was based on responses to a postal questionnaire of ICAEW members followed by 13 in-depth interviews with selected members.

Key findings from the survey were that:

- Members participated in a wide range of learning activities, including both formal and informal activities (ie learning from other colleagues, reading technical material, networking etc.) although not many respondents associated the latter with CPD.
- Although employers were seen as part of the decision making regarding what CPD activities to undertake, decisions made by the individual respondent were considered to be much more important when deciding on a CPD activity.
- The focus of CPD activity was on developing and maintaining professional competence rather than on longer-term goals, eg career development and enjoyment.

A key finding of the research was that it demonstrated the existence of a learning iceberg, where more traditional learning activities were more visible (ie courses), but at the same time, all kinds of important learning activities were hidden from view.

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<sup>38</sup> Lindsay H (2015) *Adaptability: the secret to lifelong learning*



The research findings note that many of these more hidden activities, such as learning with/from others, learning on the job and learning through reflection were often crucial to ensuring competence as professionals but most respondents did not identify these as CPD. As a result it's crucial that these hidden activities are not left out of a professional learning strategy.

### **CPD Trends in Other Professional Sectors**

This section considers the CPD policies and initiatives adopted in some other professional sectors.

#### **Financial Services**

##### **Financial Conduct Authority (FCA)**

Since December 2012, and the introduction of Retail Distribution Review rules, the Financial Conduct Authority's (FCA's) CPD requirements for financial advisers have been governed by the number of hours of CPD with advisers needing to complete a minimum of 35 hours of CPD each year for retail investment activities, of which 21 hours should be structured<sup>39</sup>. If an adviser carries out other retail activities, such as mortgage advice or managing funds, they will need to carry out CPD for that activity as well.

The FCA defines structured CPD as an activity designed to achieve a defined learning outcome. Examples of structured CPD activities include participating in courses, seminars, lectures, conferences, workshops, web-based seminars or e-learning. All CPD should be measurable and capable of being independently verified by an accredited body. The FCA states that researching products and services for clients is not included.

##### **Advisers have to keep records covering:**

1. Their needs - knowledge gaps and your target outcome of the learning
2. how they will meet their needs - a description of the activity they are going to do or have done, including number of hours
3. confirm how they met their needs (once carried out) - how the activity has met the target learning outcome, and if tested, the test result

Individuals are also required to make an annual declaration to an accredited body that they have met the CPD requirements in the previous 12 months. Accredited bodies will also carry out checks on at least 10 per cent of advisers to ensure advisers are meeting the minimum requirements. If an accredited body has concerns about an adviser, it can refer the matter to the FCA.

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<sup>39</sup> Financial Conduct Authority (2015) *Professional Standards - Advisers*

The FCA states that “CPD is not a collection of attendance certificates – we expect you to be able to demonstrate that you have developed your knowledge and skills as a result”.

The Insurance Distribution Directive (IDD) is EU legislation which sets regulatory requirements for firms designing and selling insurance products. Under the IDD, advisers selling protection services and products will need 15 hours of CPD a year to meet the directive’s standards. The CPD must be specific to the insurance market, claims handling and conflict of interest management.

An article in Money Marketing in April 2018<sup>40</sup> found that there was confusion regarding these new CPD requirements, notably which staff need to be included in the CPD and CPD content suitable for structured and unstructured learning. The article notes that “the requirements apply to both financial planners and other staff involved in selling, or transacting on, insurance contracts for all types of insurance customer. It is a fairly broad definition that includes anyone involved in the distribution in a customer facing function, but again, hopefully people are doing ongoing training for their job that includes the IDD requirements”. Concerns have also been raised over whether the new requirements will increase the protection gap if advisers decide not to undertake relevant CPD.

Although the 15 hours do not need to include structured, unstructured or a particular format of CPD, and count as part of advisers’ existing 35-hour requirement, advisers will have to make sure they have covered product specific knowledge and record this appropriately.

### **Other Bodies**

Virtually all of the other mandatory CPD schemes operating in the financial services sector are still hours-based schemes. Here are some examples:

**Association of Chartered Certified Accountants (ACCA)** – must undertake 40 hours annually with 21 verifiable units.

**Association of International Accountants** – 120 units of CPD required over a three-year period of which 60 units must be verifiable CPD. A minimum of 20 units per year.

**Chartered Institute of Public Finance and Accountancy (CIPFA)** - members must complete 120 hours of CPD activities over three years with a minimum of 20 hours in any one year.

**Institute and Faculty of Actuaries** – for members who hold a practising certificate there is a requirement for a minimum 30 hours verifiable CPD. Of which: minimum

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<sup>40</sup> Cash J *Advisers in Dark Over New Protection CPD Requirements*. Money Marketing, 10<sup>th</sup> April 2018

20 hours (of which at least 10 is external) must be technically relevant to the member's area of work.

**Personal Finance Society** - independent financial advisers have to undertake 35 CPD hours per year and 21 hours must be structured learning.

One exception is the **Institute of Chartered Accountants in England and Wales (ICAEW)** – the closest scheme to the outcome-based schemes operated by the BSB. Members can plan their own CPD activities from a range of formal and informal activities, record, report, and reflect on the CPD outcomes. ICAEW randomly selects members for CPD review and audit on a monthly basis.

## Healthcare

Outcome CPD schemes are utilised heavily within the medical profession. The General Medical Council's (GMC) CPD scheme for doctors<sup>41</sup> does not stipulate a number of hours but asks individual doctors to plan, record, report, and reflect on their CPD activities. Individual professionals must undertake several training activities with an emphasis on both formal and informal activities, and reflect by "recording any impact on your performance and practice". To verify that the learning has taken place there is a supervisor in place who oversees the CPD activities and the application of learning, ensuring that the CPD record is correct in recording the outcomes. Of particular note, it says that employers have a responsibility to create an environment that provides opportunities for all staff to maintain and develop their skills. It also talks about planning CPD to meet the needs of others including patients, teams, the organisations where they work and the wider community. The guidance also specifies that doctors must try to identify ways in which CPD activities could help to improve the quality of care for patients and the public.

In January 2019, the GMC updated its examples of reflection<sup>42</sup> which provides a series of detailed anonymised reflective narratives showing how individual doctors have successfully reflected on their CPD activities.

Research commissioned by the GMC and reported in 2013 aimed to assess the impact of CPD on doctors' performance and patient/services outcomes<sup>43</sup>. The project, based on 60 in-depth interviews with doctors and managers in NHS trusts and hospitals plus case studies, addressed five key questions:

- How does doctors' participation in CPD affect their practice and performance?

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<sup>41</sup> General Medical Council (2013) *Continuing Professional Development – Guidance for all Doctors*

<sup>42</sup> General Medical Council (2019) *Reflective Narratives - Examples of Reflection*

<sup>43</sup> Mathers N, Mitchell C, Hunn A (2013) *Study Assessing the Impact of CPD on Doctors' Performance and Patients/Services Outcomes for the GMC*

- How does participation in CPD contribute to improvements in patient or service outcomes?
- Can you identify examples of good or innovative practice in CPD?
- Can you identify examples where CPD may have contributed to changes to an individual's practice and/or changes to the way care is provided either by a team or individual?
- Can you identify examples of barriers encountered by individuals or organisations when implementing aspects of or learning from CPD and how these barriers were overcome?

Key findings were:

- Key barriers to undertaking effective CPD were time and work pressures for individual professionals, funding issues, the location of the CPD, and the problems associated with team learning, ie finding time.
- Time was also a major barrier to producing adequate reflection on CPD.
- It is not possible to demonstrate effectively the impact of CPD on a doctor's practice or performance, or if CPD contributes to improvements in patient care or service outcomes. "Many respondents stated that although they believed that CPD must intuitively have a beneficial impact, they also commented on the lack of evidence for its effectiveness: The reasons for the lack of evidence for the effectiveness of CPD included the difficulties of demonstrating an impact but, in particular, the cost of such a necessarily robust evaluation on the CPD programme".
- Case studies showing good examples of CPD practice were obtained from the research.

The report notes that "The process of identifying CPD which may have contributed to changes to an individual's practice and/or changes to the way care is delivered has been difficult. In very few cases were respondents able to speak about the outcomes of their CPD. There is a strong belief that CPD does have a positive effect on doctors' practice and performance as well as on the wider service delivery but in parallel to this belief there is an awareness that there is very little evidence for the impact of CPD. In most cases this is because there is little attempt to measure the outcomes of CPD. Doctors should continue to assume responsibility for taking part in and recording their own CPD. However there was little evidence found by this study that CPD was helping them to improve their professional effectiveness".

### **Selected Other Sectors**

**The Institution of Engineering and Technology** still has an hours-based scheme ("members should aim to undertake a minimum of 30 hours") but it is included here because it has developed an intuitive online tool called [Career Manager](#)<sup>44</sup> which allows individuals to record and submit their CPD records and reports in a relatively

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<sup>44</sup> Institution of Engineering and Technology (2018) *Career Manager*

quick and straightforward way. Individuals can also [download quick guides on recording and submitting CPD](#), CPD webinars, and access to a dashboard showing CPD data. If individuals are unsure about what counts as CPD they have created an acronym – TWAVES – representing:

- [Training courses](#)
- [Work experience](#)
- [Academic study](#)
- [Volunteering](#)
- [Events and seminars](#)
- [Self-study](#).

**RICS** still has an hours-based system (20 hours of CPD a year of which 10 hours must be formal). An online system allows CPD reports and records to be logged digitally and there is also a RICS CPD App where CPD can be logged and reported. It has created a useful user guide to the difference between formal and informal learning via a *CPD Decision Tree*<sup>45</sup>.

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<sup>45</sup> RICS (2018) *CPD Decision Tree - formal or informal CPD*

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## **Annex B: Focus Group Themes**

### **1. Moderator Introduction, Group Introductions**

Moderator introduction about overall research aims and research stages, plus scope and format of group followed by round-the-table introductions from participants (e.g. practice areas, experience, employed/tenant)

### **2. Changes to the CPD System**

Briefly introduce what changes have been made to the CPD requirements and why, and what objectives they are expected to achieve.

### **3. General Feedback on Change to New CPD System**

General discussion to include

Information and Guidance Available

- Level of understanding of requirements of new system and differences from previous system.
- Level of awareness of, and views on the usefulness of any guidance/tools/advice provided by BSB, and effectiveness/value of any communications from BSB on new system. If participants aware of information and communications from the BSB, which were seen as the most effective/accessible.
- Overall level of understanding of the requirements of new system, and for those with experience of both systems, differences from previous system.
- Do they think additional information/support should have been available from BSB/others to ensure they were aware of the changes/requirements?

Changes to Requirements and Permitted Activities

- Understanding of the role of informal learning as well as formal learning in new system, mix of informal and formal learning so far (may have emerged in 2 above but, if not, discussion on what is informal learning, perceived importance in CPD, any examples).
- Understanding of the role of reflective practice – what this involves, how important they see this as being in the new CPD system, any examples
- Feedback on system moving away from number of hours and accredited providers with more responsibility on individual barristers to choose amount, nature of CPD and any providers used. Have participants been able to deal with this change?

#### **4. CPD Activity Overview**

General description from each participant of their CPD activities in last year, e.g. content, types of learning, delivery etc. How did this differ from CPD activities in previous years prior to the introduction of the new requirements (for those with experience of both schemes)?

#### **5. The CPD Annual Process**

General discussion exploring understanding of specific elements required for compliance.

How easy did participants find it to comply with the new requirements?

Perceived effectiveness of each element, and any concerns/limitations or time/resource constraints associated with main elements of the CPD process required from barristers.

Was their sufficient support available from the BSB/others to enable them to ensure compliance with the new rules?

Are there any ways in which barristers could be helped to improve their input into the new system?

Review: written CPD plan at start of the year

Record: maintaining written records of CPD activity

Reflection: assessing whether activities have met objectives. In particular, are participants clear about self-reflection, why it is needed. Do they feel they have enough support, guidance to self-reflect effectively.

Reporting: providing information to BSB

#### **6. An Individual's Professional Development and Career**

Discussion of how the new system is being used by participants to help them to plan their professional development, and any longer term career developments. Does this differ from the approach participants took under the previous scheme?

How easy did participants find it to follow their initial CPD plan? Did they feel that there were the right CPD activities available to them to ensure they achieved their objectives?

Can participants identify any ways in which the new CPD system, or previous CPD, has had an impact on their own professional development, or contributed to their overall competency?

Are longer term career possibilities helped by the new CPD system?

Is the new scheme encouraging participants to take responsibility for their own competence and professional development? Do participants feel confident taking responsibility, or is there still a dependence on others (e.g. clerks, HR, training specialists, other colleagues etc)? If scheme is encouraging more self-responsibility, key benefits of this, and any issues with this?

How easy, or otherwise, is it to implement the knowledge and skills learnt from CPD into an individual's legal practices? If difficult, why?

### **7. Other Specific Issues**

Other issues to consider:

Do participants feel that they have more or less choice of CPD activities now,?

and

Are they knowledgeable enough about the various CPD activities and providers to make informed choices?

What consequences have there been from the removal of accreditation of CPD courses/providers?

Are there any time, resource, or costs limitations that are impacting negatively on their CPD choices and activities?

-practices, that have influenced the CPD choices? Are there likely to be any changes?

Has the delivery of CPD changed since the inception of the new system, i.e. more online delivery, more internal learning and training, less face-to-face, fewer courses, more consideration/support for reflection etc.

under the new scheme, or not? Any perceived strengths and weaknesses of new system, and any comparisons with previous system.

Have there been any unintended consequences that have resulted from the changes?

### **8. Round-up and Summary**

Final comments from each participant on how they view the effectiveness of the new CPD rules and the CPD process.

Any suggestions for changes/improvements?

Any other comments from participants

## Annex C: Online Survey Questions

### Advice / Information

1. What sources of information/advice and guidance about the new CPD scheme have you used since the changes were introduced? (Tick all that apply)

Bar Standards Board:

Guidance on the website

Contact by phone or email

BSB roadshows

BSB podcasts

BSB Facebook page

The Bar Council

The Law Society

Specialist Bar Associations (SBAs)

Chamber managers/Practice managers

Clerks in chambers

Other barristers in chambers

Other colleagues or associates

Providers of CPD courses/events

Any other source (please specify) None of the above

**2. (For each option that they have used) How useful did you find this advice/guidance? *Useful, not useful, neutral***

2a. If “not useful” answer ask why (Open)

**3. Can you think of anything that could be done to improve any of the information/guidance available to you in the future?**

[Open]

### Understanding

**4. How well do you understand the various elements of the new CPD scheme?**

- Planning

- Recording

- Reporting

- Reflection

*Not that well, very well, neutral*

4a. If not that well “*Is there any particular reason why you have given this answer?*”

### CPD Activities

**5. Please rate the following factors in terms of importance when making your decision on which CPD activities to undertake:**

*Important, Not Important, Neutral*

My individual learning needs  
 What my chambers/employer recommends  
 What my colleagues and peers recommend  
 What time I have available to undertake CPD  
 Subject matter of courses/seminars/conferences  
 Dates of courses/seminars/conferences  
 Location of courses/seminars/conferences  
 Previous use of CPD activities from a specific provider  
 Any other (please specify)

**6. Have you had experience of conducting CPD under the previous CPD scheme for barristers?**

Yes/No

**7. Please tick the types of CPD activities that you undertook in a) the last year of the previous CPD scheme, and b) the types of CPD activities that you have undertaken in the latest year of the new CPD scheme.**

External seminars/courses/workshops at a physical location  
 External conferences at a physical location  
 Internal seminars/courses/workshops/other events (i.e. in Chambers or other work place)  
 Online seminars/courses/events  
 Preparing and presenting a conference/seminar/other event presentation/lecture  
 Individual reading or research on a specific topic  
 Listening to podcasts/reading blogs/other social media  
 Any other (please specify)

**8. Are there any activities that you undertake that you would like to count as CPD activity that currently do not count or that you are not sure count?**

Yes/No

8a. If yes, what? [OPEN]

**Compliance**

**9. For each of the elements of the new CPD requirements, please indicate a) how easy it was to undertake, and b) how useful you found each element.**

Very easy/Not easy; Very useful/Not useful

- Identify learning objectives at the beginning of the year and prepare a written CPD Plan;
- Keeping a written record of the CPD activities undertaken;
- Reflecting on the CPD undertaken and explain any variation in planned CPD activities;
- Identifying and planning future learning objectives as part of CPD;
- Submitting an annual declaration of completion of CPD to the BSB each year;
- Implementing the plan you had made

**10. Can you explain the reasons behind your previous answer regarding implementing the plan you had made?**

**11. Please describe what kind of reflection you have undertaken in relation to your CPD activities.**

[OPEN]

**Effectiveness of CPD / Old vs New scheme**

**12. Thinking about the CPD activities that you have engaged in since the introduction of the new how effective have they been in helping you to:**

*Very effective/not effective/neutral*

- Develop your skills
- Develop your knowledge
- Develop your professional standards
- Keep you up to date with changes in your areas of practice
- Address any knowledge/skills gaps that you have identified
- Meet the competencies required for professional practice

**13. What have you found to be a) the most useful or beneficial aspects of the current CPD scheme and b) the least beneficial aspects of the current CPD scheme? [OPEN]**

**14. [If participated in old scheme] Has it been easier or more difficult to meet the requirements of the new CPD scheme compared to the old CPD scheme?**

*Easier/More Difficult/Neutral*

14a. Can you explain why you have given the previous answer?

**15. [If participated in old scheme] Do you think your learning, training and professional development needs are better met under the old scheme or the new scheme?**

New scheme

Old scheme

Both the same

Don't know

15a. Can you explain why you have given the previous answer?

**16. [If participated in old scheme] Here are some of the key changes that have been introduced in the new CPD scheme. Which have been useful?**

*Useful, not useful, neither*

Greater flexibility of which types of activity count as CPD (e.g. informal learning, drafting etc)

Greater variety in terms of learning areas that count as CPD (e.g. Equality & Diversity, practice management, staff management etc.)

Removal of a mandated number of hours

Removal of accredited course providers

**17. Do you think you are spending more, less, or about the same hours on CPD under the new scheme that you were spending under the old scheme?**

More

Less

About the same

Don't know

**18. Are there any other comments you would like to make in relation to CPD that you have not covered in this survey?**

## Annex D: Interview Themes and Questions

### 1. Understanding

What do you understand the purpose of CPD to be? How do you interpret CPD in relation to the 'day job'...? (*Probe: Is it about compliance, career development, professional effectiveness, improving knowledge, improving productivity?*)

### 2. Experience

Are there any barriers for you, in terms of completing CPD? (*Open ended but can prompt if needed e.g. time, work pressure, evidence for effectiveness, administrative burden, self-employment admin 'overheads', no accredited providers etc.*)

*If they are working in Chambers, and not covered in answers above, ask if there is any role played by Chambers/Chamber Managers/Clerks or other barristers in either supporting CPD, monitoring/reviewing CPD, or undertaking CPD? For example, is CPD discussed in any meetings or reviews or embedded into any internal reviews or planning, is there help available regarding the CPD process and admin tasks an individual has to undertake, is knowledge and information about CPD shared, etc.?*

OR

*If employed barrister, ask similar question regarding their organisation.*

### 3. Learning and development

How do you identify areas for learning and development? And what type of and CPD activity are you undertaking to address that? (*Courses, conferences, informal learning, online etc.*)

Are there areas of learning that are not being met? (*Legal knowledge and broader skills e.g. management training, handling witnesses/clients, organisational skills, wellbeing/stress management, ethics, equality and diversity*)

If not mentioned above, ask have you undertaken, or would you consider undertaking CPD activity in some of the following fields? How useful would you find CPD in these areas?

- Equality and diversity
- Staff and chambers management
- Handling witnesses/clients
- Wellbeing/stress management
- Ethics

### 4. Comparison

What expectations did you have of the new scheme compared with the old scheme? (*Easier/harder to participate? Facilitate new approaches to learning?*) To what extent has the new scheme matched or exceeded your expectations? (*Needs are better met? About the same?*)



Have you noticed any differences in the courses or resources available from CPD providers since the new rules came into force?

## 5. Process

Detail around specific elements of the CPD process, ease of completing those elements, and perceived usefulness (prioritise Planning and Reflection)

**Plan** – what do you understand CPD planning to involve? What is the timeframe? Is the timing suitable for professional development? Time with renewing practice certificate? How to manage changes to the plan throughout the cycle.

**Record** – Are you clear about the details required? Understanding range of choices for CPD that are now available? What evidence is required?

**Report** – is this straightforward? Any thoughts or comments? Usage of online systems or apps?

**Reflect** - reflective learning – what do you think it means? Is there positive educational value attached to this? When do you reflect – at the end of the year or is it a regular thing?

## 6. Guidance and support

Have you been supported enough to meet all the new requirements of the scheme or is there additional support you may require in relation to any of the elements?

Reflecting, Planning, Recording, Reporting

In the online survey you mentioned the following as sources of advice/guidance/information you have used on the new CPD scheme.....

If just one source, why this source and how useful is it/was it?

If more than one, which of these sources is/was the most useful and why?

If they did not use any BSB sources, ask why.

Do you use source(s) above regularly, or not? Or just used on a one-off basis, i.e. at the start of the new CPD scheme.

Have there been any constraints you have faced in terms of accessing and obtaining information, advice or guidance on the new scheme?

## 7. Effectiveness

How valuable do you consider CPD to be in terms of contributing to an overall sense of competence?

What are your thoughts on compliance and enforcement? Are you aware of any sanctions/consequences if CPD is not complied with?

Do you think the scheme is encouraging barristers to take responsibility for their own competence and professional development?

Is the scheme relevant to the way you currently practice?

### **8. The future**

*[If not covered previously]* Are there any ways in which you could be helped to improve your participation in the new system?

Are there any changes that you would like to see to the scheme? Any other comments for the BSB? Indeed, any other thoughts or comments bearing in mind what we've talked about?