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**CPD Consultation Responses**

**9 June – 23 November 2011**

**From: Jeffrey Lamb**

Sent: 10 June 2011 08:14

To: Kofi Kramo

Subject: CPD review

I don’t understand why the Bar Standards Board, which is funded by barristers, has taken the absurd view that we should all be undertaking MORE activities than we do now in order to obtain meaningless CPD points. I can see no reason whatsoever for adding to an already ridiculous burden for busy practising barristers. This consultation is merely a sop to the ridiculous notion that we, as a profession, have to maintain high standards. There has never been a time when high standards were not the norm at the Bar, with of course, inevitable exceptions. Extra CPD “training” will not get rid of those exceptions. This entire review is yet another waste of OUR money. I am still waiting to see what the BSB will ever actually do FOR us and not AGAINST us!

**From: Caroline English**

Sent: 09 June 2011 20:29

To: Kofi Kramo

Subject: Proposed Increase in CPD Hours

Dear Sirs,

I cannot begin to tell you how ANGRY I am by the proposed increase in the number of CPD hours from 12 to 24. Do those people behind this ridiculous proposal live in the current REAL world where members of the Bar are fighting to make ends meet, with an ever-increasing workload in relation to an ever-decreasing number of briefs and for an EVER-DECREASING fee? Do they really suppose that those of us trying hard to keep our heads above water and survive in this profession have either the time, the inclination or the funds to double the number of these wholly pointless and ridiculous hours, which have always been, are now and will continue to be in the future, a monumental waste of time and nothing more than a money-making exercise for the powers that be? You do not better yourself professionally by watching pointless videos in chambers, or by reading criminal law week and doing multiple choice tests, you keep abreast of developments in the law by getting on your hind feet in court day in and day out, week in and week out.

Shame on anyone who supports these proposals that can only add to the burden and misery that this profession currently heaps upon its members - particularly in view of the disgraceful level of increases in fees for practising certificates, which is yet another money-making racket at our expense.

Yours faithfully

CAROLINE ENGLISH

Furnival Chambers

Sent from my iPad

**From: Adam Wagner**

Sent: 14 June 2011 09:09

To: Kofi Kramo

Subject: Response to CPD consultation

Below is my response to the consultation - appropriately, by way of a blog post!

Adam Wagner

1 Crown Office Row

Blogging (and maybe tweeting) should be part of Continuing Professional Development

June 3, 2011 by <http://ukhumanrightsblog.com/author/adam1cor/> Adam Wagner | <http://adam1cor.wordpress.com/wp-admin/post.php?post=8868&action=edit> Edit

Yesterday’s article by Alex Aldridge on Guardian.co.uk - <http://www.guardian.co.uk/law/2011/jun/02/barristers-box-ticking-continuing-professional-development#start-of-comments> Why barristers balk at the ‘box-ticking’ of continuing professional development -has sparked a furious (well, furious-ish) debate in the comments section and Twitter over whether legal blogging and tweeting should be included in barristers’ compulsory Continuing Professional Development (CPD) hours.

My view is that legal blogging, and possibly even legal tweeting, should be included in CPD, and currently the former almost certainly is. But this is set to change if the Bar Standards Board’s (BSB) new proposals are accepted, cutting blogging out of CPD completely. This is a bad idea, for reasons I will explain.

But first, a general introduction to CPD. The Bar Standards Board’s (BSB) <http://www.barstandardsboard.org.uk/assets/documents/CPD%20pack%20240211.pdf> CPD information pack explains it as follows:

CPD is work undertaken over and above the normal commitments of barristers with a view to such work developing their skills, knowledge and professional standards in areas relevant to their present or proposed area of practice, and in order to keep themselves up to date and maintain the highest standards of professional practice.

All barristers are required to complete 12 CPD hours per year. If they fail to do so, they are likely to be disciplined by the BSB. The offence is strict liability (that is, there are no excuses) and if convicted a barrister usually gets a fine.

The system is fairly flexible, at least once you have completed your first three years of practixe. After that, 8 of the 12 required hours can be “unaccredited”. This includes presenting lectures, teaching on university courses, advocacy training, mock trials and mooting. And

Legal writing or editing can count for a maximum of 4 unaccredited CPD hours per calendar year.

Writing or editing the following “can” count for these hours: law books, law articles, practice notes for publication, consultation papers, examination question papers, law update papers, legal dissertations and legal reports.

Two points. First, the word “can” (as opposed to if the sentence began “Only”) implies a non-exhuastive list. Therefore, it is perfectly reasonable that other forms of writing could be included so long as they fit in with the general principles of CPD, namely that it develops a barrister’s “skills, knowledge and professional standards” in an area relevant to their practice.

Secondly, in my view “law articles” would cover many blog posts. There is little if any difference in content or even form between many legal blog articles and those published in legal journals. Clearly, not all blog posts could be included. For example, to take two of my own posts, I would argue that <http://ukhumanrightsblog.com/2011/05/25/police-may-have-duty-to-inform-victims-of-phone-hacking/> this post, which is a case comment on a judicial review application about phone hacking, should count, but <http://ukhumanrightsblog.com/2011/05/09/please-sponsor-us-in-the-london-legal-walk/> this post, a more personal plea for sponsorship in the London Legal Walk, should not.

As <http://twitter.com/#!/Charonqc> CharonQC put it yesterday <http://twitter.com/#!/Charonqc/status/76296852143742978> on Twitter:

Serious law blogging (done by a few barristers) merits credit for CPD – and is remarkably good service to public

I agree with Charon. Legal blogging, defined as serious commentary on the law published online, often involves significant research for the lawyer writing the blog. And, it also serves an educational purpose by presenting the law in an understandable way to the public.

Tweeting is less straightforward. Most of the time Tweeting is like having a conversation in the pub with other lawyers. Of interest and possibly of professional developmental use, but hardly the kind of activity envisaged by the CPD system. That said, a case might be made for detailed “live” tweeting of a new case report being included in CPD.

Meanwhile, on High Holborn…

This may all be about to change. The BSB has just undertaken a <http://www.barstandardsboard.org.uk/Practisingcertandcpd/CPDReview/> major review of CPD, and has published a <http://www.barstandardsboard.org.uk/assets/documents/DRAFT%20CPD%20HANDBOOK.pdf> proposed draft handbook, which as well as recommending an increase in CPD hours from 12 to 24 annually, includes the following as “not allowable”:

Unofficial networking activities such as running a personal website, blog, legal commentary or online diary.

In my view, there are a number of problems with this. Fist, what is an “unofficial” networking activity? This expression may lead to the absurd result that serious legal blogging on the UK Human Rights Blog or UK Supreme Court Blog would be included in CPD, as these are “official” chambers blogs, but serious legal blogging on <http://pinktape.co.uk/> Pink Tape, a fantastic family law resource run by barrister Lucy Reed, would not.

Secondly, it is understandable why personal networking activities would be excluded. It is possible to imagine a barrister who runs a personal blog with little educational content in the form envisaged by the CPD system (such as, with no disrespect intended, the <http://babybarista.blogspot.com/> Baby Barista blog) arguing that it increases his professional profile so should count for CPD. But why is “legal commentary” lumped in there too? Legal commentary on a blog is usually pretty much identical to an article in a legal journal. An alien from Mars would not be able to tell the difference. This amounts to a format bias which is not in my view objectively justifiable, particularly in a profession which would like to consider itself forward-thinking.

Thirdly, the proposed handbook explains the point of CPD in the following terms: “increase knowledge, keep up to date, maintain professional competence, improve existing skills, develop new skills (professional or interpersonal)… become more marketable“. From my experience of blogging for just over a year, these are all effects of legal blogging.

Fourthly, there is clearly a public educational aspect to CPD; hence the inclusion of mooting, advocacy training and lecturing. I have <http://ukhumanrightsblog.com/2011/05/24/must-lawyers-blog-and-tweet/> argued recently that explaining the law to the public should be an ethical duty for all lawyers, and I see no reason why the CPD system should discourage such activity, particularly online where (as opposed to an obscure and expensive legal journal) public participation is high.

And finally, the BSB propose including “private study” into CPD hours. This includes reading “law reports, statutes, legal journals or similar materials”. This leads to the bizarre result that a barrister can claim CPD for reading a legal blog post, but not for writing one.

So, in my view the offending provision should be amended as follows:

Unofficial networking activities such as running a personal website, blog, legal commentary or online diary.

And the following should be added under “Publishing a book or article” (that is, in the “allowable” section)

Legal blogging which is akin to a legal article, for example a case comment or practice area update.

The advantage of this wide definition is that it captures the essence of what people consider to be acceptable, that is “legal”, writing without being too prescriptive.

The BSB working group have explained by email their rationale for the exclusion of blogging. They say:

This type of activity was excluded by the Review Group because quality can vary and there are no quality controls or referee processes etc for blogs, personal diaries and websites etc. If a book, article etc is published (including on line) there are some control processes.

I agree that quality can vary. But I disagree that there are no quality controls or referee processes for blogs: for example, the UK Human Rights Blog sometimes accepts guest posts. It only does so if they are of sufficient quality, and they are also edited (as are all posts) for quality. And another quality check is the fact that blog posts are “published” too. Most lawyers would be very reluctant to publish an article which would them them up in public, so there is a large element of self-regulation too.

This final point goes to the heart of the issue; so much of CPD, and in particular the proposed new regime where all of a barrister’s CPD hours can be unverifiable, rests on trust that the practitioner is honestly reporting their activities. We all know what is and what is not educational reading, and the CPD system makes us the judges of that. This trust should be allowed to bloggers too. If a blog is mere puff, any self-respecting barrister should exclude it from CPD, and can be disciplined for not doing so in any case.

The draft handbook will shortly be open to consultation and anyone who thinks blogging should be included in CPD should respond. BSB are also admirably responsive on through their <http://twitter.com/#!/barstandards> Twitter account, so can be reached there too. Legal blogging provides a public service by explaining the law in a simple and accessible way. It is also an engaging way for a barrister to keep up to date with their current or future practice area. This should be encouraged, not discouraged, by the Bar’s professional regulator.

Adam Wagner

One Crown Office Row, Temple, London EC4Y 7HH, www.1cor.com <http://www.1cor.com/> / Web C.V. <http://www.1cor.com/1144/?form\_668.replyids=119>

**From: Stewart Leech QC**

Sent: 22 June 2011 10:16

To: Kofi Kramo

Cc: Consultation

Subject: CPD consultation

Dear Sir/Madam

I am strongly opposed to the proposal to increase the number of CPD hours required each year from 12 to 24.

The Bar is obliged to keep on top of professional development. Each time we go to court or advise we need to have the latest developments at our fingertips. If we do not, we lose cases and therefore lose professional clients and therefore lose our livelihood.

I, like all other successful members of the Bar that I know, subscribe to specialist law reports and journals which I read each month to keep on top of caselaw. I subscribe to lexis nexis and have a daily updating service which takes me to any new cases, statues and statutory instruments relevant to my practice. That is sufficient.

The adoption of CDP has already spawned a rather pointless industry in terms of CPD providers. There is no need to increase it.

I have never been convinced that having obligatory CPD but if it is, 12 hours is more than enough. It already eats into one’s life enough.

Regards,

Stewart Leech QC

**From: Adrian Butterworth**

Sent: Thursday, June 23, 2011 5:14 PM

To: Kofi Kramo

Cc: BSB Contact Us

Subject: RE: Bar Standards Board - June update

Just to let you know that in my view, 24 CPD hours per annum will be very, very difficult for barristers like me working at the Employed Bar if the proposed requirement is intended to apply to us – as in-house counsel we have very demanding schedules and in addition it is often difficult to locate sessions that qualify as CPD.

Understandably, employers are often not prepared to sacrifice a valuable in-house resource for these types of activity.

12 hours pre annum is entirely adequate and achieves the purpose intended – to increase this is very likely unnecessary.

Accordingly, I ask that the current requirement of 12 hours per annum CPD be retained for the Employed Bar.

Please let me know if you would like to speak about this which may be an easier way of giving a sense of life at the Employed Bar and the impact of changes of this type.

Please can you confirm receipt.

Many thanks,

Adrian Butterworth

**From: George Hugh-Jones QC**

Sent: 27 June 2011 09:26

To: Kofi Kramo

Subject: CPD increase from 12 to 24 hours

To whom it may concern,

I am writing simply to convey my reaction to the proposed increase. Practitioners at the bar already find that 12 hrs CPD is often secured in two substantial day-long attendances at recognised seminars costing something in the region of £550 per attendance. Assuming similar attendances to secure 24 points, the cost would be in the region of £2,200 pa. It is must be open to significant doubt that a sudden doubling of the requirements is necessary. I would openly question whether there is sufficient evidence to say that 12 hrs is too short. I therefore would like to register my opposition to the increase.

Yours sincerely,

George Hugh-Jones QC

**From:**

Sent: 25 June 2011 12:54

To: Kofi Kramo

Cc:

Subject: Increase in CPD Points

Re CPD POINTS

I have consulted widely within my Chambers - a wholly Criminal defence set comprising 80 members.

The unanimous feeling is that the proposed changes - requiring a minimum of 24 points - outside the working day are unnecessary, burdensome and expensive - placing further pressure upon an overstretched profession.

We are all in court daily - and our standard of advocacy and knowledge of law and procedure are constantly monitored by judges, solicitors and lay clients.

The present number of hours is only a minimum and it is common to achieve many more points in any event without it being made compulsory for all

Nigel Lambert QC

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Nigel Lambert QC

Head of Chambers

CARMELITE CHAMBERS

**From: Amelia Fosuhene**

Sent: 25 June 2011 08:14

To: Kofi Kramo

Subject: Cpd proposals

I work constantly, keeping up to date with current law, it is a necessity in modern practice at the bar. On a whole the bar prides itself on providing a service second to none. I am annoyed at the proposals which fail to take into consideration the practicalities of being a parent/guardian to young children and practicing at the modern bar. After all we are not all independently wealthy! So I ask the question, Where on gods good earth does the bar standards board think I can find the time or money to squeeze in another 12 hours of CPD lectures? How on earth can women with children and a fully functioning family life cope with the additional costs and juggle the additional time that this change would demand. It is not simply the hour at the lecture or seminar but sometimes the additional time and costs it takes to get to such functions. Also the childcare costs that arise with that. Of course one can do online courses but the quality is not the same nor the feedback or question and answer sessions available.

With cuts to barristers incomes, we who are not in the top ten highest earners are forced to work every available hour. That includes before the children wake in the morning and after they sleep at night. With knee jerk changes to criminal legislation, we are also forced to keep abreast of all legislation, it would be impossible to keep up in practice without doing so.

It is my sincere belief that this proposal is simply a mechanism to squeeze the bar further.

As such I am completely wholly and utterly opposed to the proposal to extend hours.

Amelia Fosuhene

Carmelite chambers.

**From: Helen Evans**

Sent: 24 June 2011 17:01

To: Kofi Kramo

Subject: CPD consultation

Dear Sir/Madam

I am writing in respect of the CPD consultation. I do not think that it is sensible to increase CPD hours to 24 hours a year and as someone about to go on maternity leave, I am concerned about a disproportionate burden on female members of the bar. There are two allied issues here:

1. There is no need for more onerous CPD provision. There is no problem (as far as I am aware) of lack of education and skill at the bar. There is much more of a problem in terms of reasonable work/life balance in a very demanding, time consuming and intellectually rigorous job. Having more CPD will only increase the burden on over-worked members of the bar, particularly mothers. This will not assist the very real problem that the bar has in retaining female members with family responsibility;

2. The Bar Standards Board makes it very difficult for people going on maternity leave to apply for CPD waivers. I have recently experienced problems in this regard which culminated in me just deciding to do all 12 hours for this year because of the inability to regularise one’s CPD position in advance. I was not willing to be exposed to possible disciplinary sanctions if an application for a waiver were subsequently disallowed. Having to do 24 hours’ CPD would only make matters worse.

Finally, I would question the value of quite a lot of CPD activities as well as the way that allowances are calculated. Some activities of very little benefit, e.g IT courses, are allowed lots of points. Other very demanding activities- e.g. researching and writing lectures, have ludicrously small allowances. As for attending lectures given by others- well, these are of patchy quality. Some are excellent, some are a waste of time.

I do not see the benefit to having an extra 12 CPD hours and indeed the downsides far outstrip any gain. The increase in hours could set back attempts to achieve a manageable work/life balance- I quite regularly work over 60 hours per week, and extra CPD is enough to make a substantial dent on what free time I have left.

Yours sincerely

Helen Evans

**From: Rosemary Budden**

Sent: 24 June 2011 14:15

To: Kofi Kramo

Subject: Respond to CPD Consultation

Please find my responses below:

Q1 Do you think that the fundamental approach to CPD requirements should

continue to be based on a system defined by the number of hours of

CPD undertaken annually?

Yes

Q2 Do you agree with the proposed new approach for CPD that will, as a

single but five-fold strategy (1) increase the range of approved CPD

activities; (2) increase the number of CPD hours per annum; (3) raise the

standard of record-keeping; (4) simplify the system of reporting, and (5)

simplify enforcement of the CPD Regulations?

Absolutely not. There is no need to increase the number of CPD hours per annum.

Q3 Do you agree that with the more flexible definition of CPD (Report

paragraph 117) the required number of hours should be increased from

12 to 24 hours per annum?

Absolutely not. There is no need to increase the number of CPD hours per annum.

Q7 Do you agree that there should be no waivers of CPD requirements for

barristers who wish to retain their practising certificates?

No. I think that there should be an automatic suspension of requirement for CDP for those on maternity leave without having the admin of making an application to suspend your practising certificate. The current policy is not family friendly and imposes an unnecessary burden on women away from chambers for 6 months or a year.

Q8 Has the system of accreditation of CPD providers and courses by the

BSB outlived its usefulness, indicating that it should be replaced by the

proposed system of barristers recording their own ‘verifiable’ and ‘nonverifiable’

activities?

Yes

Q12 Do you have any other comments on any of the recommendations or the

proposed new system as detailed in Chapter XVI of the Report or in the

draft Handbook?

Reading law reports and article should be able to count as hours for nonverifiable activities.

Kind regards,

Rosemary

Rosemary Budden

Barrister

Chambers of Lewis Marks QC

**From: Richard Nall-Cain**

Sent: 24 June 2011 12:23

To: Kofi Kramo

Subject: CPD

I have always done much more than 12 hours CPD pa; in my view a barrister cannot keep up-to-date with 12 hours CPD. I support the proposed changes as they will re-assure the public/client and benefit barristers.

Richard Nall-Cain

**From: Anne Johnston**

Sent: 24 June 2011 08:55

To: Kofi Kramo

Cc: Khalil Karim

Subject: CPD Points

This is yet another financial burden on the bar and unnecessary.

Anne Johnston

Carmelite Chambers

**From: Maria**

Sent: 23 June 2011 17:59

To: Kofi Kramo

Subject: Proposed CPD increase

Dear Sir/Madam

I am a criminal law barrister who was called to the Bar in 2000. I have been in Court since that date on a daily basis (save for a few weeks holiday each year).

I do not agree that the current CPD requirement of 12 hours should be increased for criminal barristers. We already have advocacy training on a daily basis. The Judges and jury are our assessors. There is no need for us to undergo 24 hours of further training. It is very time consuming to obtain CPD points (and also very costly).

The criminal Bar is (as I sure you know) already going through unfair cuts to our fees. It is, with respect, about time we had some good news, rather than the usual depressing and demoralising news.

Kind Regards

Maria Karaiskos

Old Bailey Chambers®

**From: Tim Forster**

Sent: 23 June 2011 15:49

To: Kofi Kramo

Subject: Re: proposed CPD point requirement increase

To whom it may concern:

I am over 20 years call.

I like to think I work hard.

I also have a busy family life when I have finished work.

I also like to think that I am forever learning how to do my job better. I hope that those with whom I work in court on a daily basis would agree.

I do not need to spend another 12 hours a year to prove that I am competent enough to continue in my profession.

Please take my views into account.

Regards,

Tim Forster

**From: Samantha Singer**

Sent: 23 June 2011 15:07

To: Kofi Kramo

Subject: Proposed increase in CPD hours to 24.

I disagree strongly with the proposals and wish my position to be registered during the consultation.

Thank you.

Samantha Singer

Chambers of Lewis Marks QC

Queen Elizabeth Building

Temple

London EC4Y 9BS

**From: Colin Aylott**

Sent: 22 June 2011 10:35

To: Kofi Kramo

Subject: Increase in CPD hours

In response to the proposed increase to 24 hours I would wish to register my objections.

As a busy legal aid practitioner I struggle to balance my working life and family life. Work takes me all around the country and invariably means some part of my weekend is either spent travelling or working. I have a young family as well and I must ensure that I make time for them as well. The idea that my weekends should be filled with further CPD courses in addition to the current 12 hours is a step too far. The financial burden as well is a factor that needs to be borne in mind given that those of us at the criminal bar have seen our incomes plummet with further cuts just announced. Most of the CPD courses are expensive and either involve taking time out of court or our of our weekends. I would strongly argue for a retention of the current requirement of 12 hours.

Yours sincerely

Colin Aylott

**From: Ben**

Sent: 22 June 2011 10:11

To: Kofi Kramo

Subject: CPD

I strongly object to any increase in the number of points required. This will undoubtedly cause more expense at a time when few if any legal aid practitioners can afford it. The present scheme is sufficient and does not require change. Please direct your efforts to helping the profession rather than squeezing it further.

Ben hargreaves

Carmelite chambers

**From: Houzla Rawat**

Sent: 23 June 2011 00:48

To: Kofi Kramo

Subject: Increase in CPD hours

Dear Sir/Madam,

I am writing to register my objection to proposals to increase the number of CPD hours from 12 to 24 hours.

The proposed increase is unnecessary. It will pose an expensive burden on those of us who are Legal Aid barristers at a time when the government is proposing cutting some of our fees by 25%.

I hope my objections are taken into consideration.

Yours sincerely,

Houzla Rawat

**From: Francesca Titus**

Sent: 22 June 2011 14:35

To: Kofi Kramo

Subject: CPD

Dear Sirs,

I am concerned to read the proposals that CPD points be increased from a requirement of 12 to 24 points.

In short I oppose any increase for the following reasons:

1. Barristers who rely on public funding are already suffering financial hardship and have had to find money for the increased cost of items such as Practicing Certificates. Whilst our costs are increasing our fees are being slashed. Who will cover the cost of obtaining more CPD points?

2. Time. With the increased demands on solicitors to cover more cases in order to keep their firms running, more work is already being forced on to Counsel. This will be an additional burden on already over worked advocates.

Thank you for taking the time to consider my opposition to this proposal.

Yours faithfully,

Francesca Titus

**From: Michael Wood QC**

Sent: 22 June 2011 11:24

To: Kofi Kramo

Subject: CPD

I understand you are considering increasing the number of hours from 12 to 24.

As many of the courses have to be paid for any increase would be a further (and unnecessary ) burden to those at the Criminal Bar.

Regards

Michael Wood QC

**From: Morwenna Macro**

Sent: 22 June 2011 15:56

To: Kofi Kramo

Subject: CPD consultation response

My response:

1. I strongly agree with the removal of accreditation for the reasons stated.

2. I strongly agree with the greater flexibility of what counts as CPD for the reasons stated. I have found that preparing for lectures and seminars (talking for about half an hour to an hour) would typically take me about 10 hours of research and would greatly increase my knowledge and understanding of the particular topic; the topic would be picked by me as very relevant to my practice/intended practice and the knowledge gained from these hours much greater than the equivalent for attending other CPD events (it is not always easy to find many events of great relevance).

3. I strongly disagree with the proposal to increase the requirement to 24 hours. Any increase must go hand in hand with the removal of accreditation and the greater flexibility in CPD activities. However, 24 hours is a significant increase and will be particularly onerous to those who work part time or have children. The vast majority of lectures are held in the evening which is extremely difficult for working mothers and fathers. Indeed it is worth considering whether there is indirect sex discrimination considering the disparate impact on women. Yes there are online courses available but these are prohibitively expensive (at least £45 per hour). I note that the SRA requires 16 hours CPD. I cannot see any reason why Barristers should need to do more than Solicitors and would suggest that any increase is limited to 16 hours for all of the above reasons.

4. Further consideration should be given to the situation of those going on maternity leave. I went on maternity leave in February 2010. It was difficult for me, heavily pregnant and with a lot to finish off before my leave, to do my CPD at the time (there also was very little choice at that time of year). It was irrelevant that I had exceeded my CPD requirements for the previous year as these hours could not be carried forward. I then had the requirement of doing 2 CPD hours before returning to practice. This is a mental barrier in addition to a physical barrier for mothers who struggle with the decision about whether to return to the Bar. It is ridiculous that this CPD must be done before returning, when childcare may not yet be in place and when lack of income means that it is difficult to afford to pay for online CPD on top of practice fees, insurance, new books...The waiver/extension form seemed bureaucratic and the fee was prohibitive (more than the online CPD). I would suggest that those going on maternity leave should be allowed to carry over a limited number of hours from the previous year (eg up to 3 months worth) and/or should be allowed a limited period (eg up to 3 months) to catch up with CPD, automatically and without the need to make an application. There needs to be a reduction in the unnecessary bureaucracy and cost of returning to practice.

5. A suggestion to alleviate some of the problems associated with most lectures at bar associations and inns of court (far cheaper than online CPD, if not free, and of great quality) being held in the evening would be a requirement or at least encouragement that they be filmed and eg held in the inns of court libraries to make them available for those that cannot attend (that would also cover busy practitioners travelling back from court that can’t make it, in addition to parents and part-timers). They could then be verifiable.

Morwenna Macro

a Barrister with non-practising status on maternity leave; intending to return to practice in July 2011)

**From: Greg KingUnderwood**

Sent: 22 June 2011 12:03

To: Kofi Kramo

Subject: CPD Consultation

To Whom It May Concern:

This is the first time that I am putting forward my thoughts to a Consultation process. Therefore, I apologise that my emailed thoughts are not in a more formal format. However, due to the issue being consulted upon, I do feel the need to let my thoughts be known.

First, I am in full support of the general CPD project, by which I mean the profession wide maintenance of standards etc. Having a way to show that we are continuing with our development is essential and, in this day and age, a fact of life. It does also mean that those that participate with the right state of mind do indeed feel that they are enhancing their career with the yearly accrual of knowledge.

Secondly, the fact that CPD applies to most, if not all, professions means that it is a 'one size fits all' way of measuring development. Consequently, it does not reflect the particularities of any given profession. That is exemplified in our situation as the Bar is entirely unique as a profession due to the job that we are required to do.

Thirdly, because we are a referral profession and we specialise in advocacy, one of our main job requirements is to keep up to date with the law. As a Criminal Practitioner, having to buy Archbold every year is a constant burden. However, the reason that it is purchased is due to the ever changing law, both statutory and case law. No other profession has such constant evolution of its daily work material. Also, by doing ever more complicated cases as one becomes ever more experienced, one enhances one's advocacy skills. It is a welcomed by product of experience.

In that sense, the Bar is totally unique. Without wanting to labour the point, the very purpose of being a Barrister is to make sure you are up to date with the law and that you enhance you're skill set.

Therefore, to have a mandatory requirement to be able to produce evidence of this continuing development is somewhat superfluous for the Bar. Survival at the Bar should, in my humble opinion, be evidence of continuing development itself. However, as I say above, as CPD is a fact of life these days, the Bar does also have to play it's part. Undertaking to do 12 CPD hours is sufficient for that purpose.

However, if that were increased, it would place an undue burden on the profession. It is a burden as undertaking CPD hours is not remunerated. As a self employed profession, this does not make economic sense. In house Counsel or Solicitors can undertake CPD in 'company time'. Moreover, as we do 'development' in our day job, having to do it and not get paid for it, is somewhat grating. It is also undue for the same reason as stated above, because quite simply, we do it anyway.

In another sense, it is also a precious waste of resources. If as a Barrister I choose to develop a specialism, I would be constantly be up to date in that area of law, or perhaps that 'sub-area' of law. However, in order to fulfill the 24 hour CPD requirement, I would have to delve into other areas of law, which I would not practice in. This additional research is a waste of my time, which is the most precious resource I possess. If that process is scaled up across the profession, that is a tremendous waste of the Bar's most precious resource.

For those reasons, I submit that the number of CPD hours a Barrister has to do should remain at 12. It should not be increased.

Many thanks for taking the time to read my view on this matter.

Kind Regards,

Gregory King-Underwood

Carmelite Chambers

**From: Edmund King**

Sent: 21 June 2011 18:06

To: Kofi Kramo

Subject: CPD consultation

Please find attached a response to the CPD consultation.

Kind regards

Edmund King

Response to CPD Consulation Questions

Q1. Yes, although I would favour abolition of CPD unless a cost/benefit analysis shows that the costs which it imposes on the profession have resulted in measurable improvements of service to consumers.

For those barristers who would attend courses and lectures anyway, there is a large exercise in form filling (i.e. red tape which produces no increase in quality). For those barristers who would not attend courses, the question is whether attending those courses leads to any improvements in the quality of their services to the public. There is no evidence of this.

In my view, the only real use of CPD is that if there is a scandal in the profession, the BSB will be able to say that it has taken measures to “improve quality”. This is what is meant, I think, by “reputational risks in not having an effective system in place”. I do not think that this should be the concern of the regulator. Rather, its loadstar should be what benefits consumers. I am not sure that CPD achieves sufficient benefit to consumers to justify its cost. The cost includes not just the £223,500 annual cost of running the CPD system to the BSB (a figure which does not appear to include the costs of the associated disciplinary processes) – but also the definite and quantifiable costs on the profession. These are considerable.

The loadstar of benefit to the consumer also suggests that conferences which “improve collegiality” in the profession should not be worthy of CPD – they do not improve attendees’ service to the public. I am all for collegiality. That is because I enjoy the company of other barristers. I do not think that this makes me a better barrister: barristers who do not attend Bar Council conferences are just as likely to be competent to represent the public as those who do.

It would be preferable for the BSB to say that the current system (which the Report describes as a “complex area of the BSB’s activities”) achieves little and does not justify its cost. If the profession needs more regulatory intervention, in my view it should take the form of drumming out of the profession those (rare) useless barristers who do not meet ethical standards or who are incompetent. That way the BSB would be delivering better regulation for the public for lower cost.

Q2. No. As to the five points: (1) Yes. (2) No. There is no evidence that imposing further time/money costs on the profession will lead to any improvement in the quality of service to clients. The report gives no reason for suggesting increasing the hours from 12 to 24 other than it thinks that the public would not think 12 hours is enough (para 119): i.e. a double guess, with no evidence. The view of the public should not be the view of the regulator – the question should be whether increasing the hours will lead to an improvement in the quality of the profession. There is no evidence it will. (3) No. The BSB should be cutting red-tape, not increasing record keeping requirements. (4) Yes (5) Yes, but the greatest simplification would be abolition.

Q3. No. The premise of the question appears to be a trade off is appropriate on the basis that if we are no longer to be required to “take the medicine” (the report’s phrase) of pointless restrictions, it is “balanced” to increase the hours. Removing unhelpful restrictions is welcome. Such removal does not need “balancing” by increasing the hours of CPD. This should be independently justified by evidence that such a change is needed.

The Consultation makes no attempt to assess the cost on the profession of losing a further 12 hours of chargeable time per year. This will be very considerable unless the exercise is pointless:

* If these activities are being done anyway, then there will be no improvement in standards (because the same activities will be being done). The change will merely cause time to be lost by further record keeping (eg. being required to monitor daily time already spent reading lawtel updates etc). The exercise will be pointless in terms of improving quality of service to clients.
* If it is said that the activities are not currently being done, then the cost to the profession of the lost time has to be factored in and weighed against (i) likelihood that the change in rules will change this (see 1 above and 9 below) and (ii) the forecast improvements of quality of service to clients.

Q4. Yes.

Q5. Yes

Q6. Yes

Q7. Yes

Q8. Yes

Q9. No. It will encourage dishonesty. A minority of people who have not complied will be tempted to say that they have. It is far better to have fewer laws which enjoy near universal support and which are well enforced than to have more laws which are not well respected, and with which compliance is rarely checked. The same applies – with if anything greater force – to regulations.

Q10. No view

Q11 Yes

Q12. There should be a cost-benefit analysis, which explains what the costs of the measure are estimated to be if they are implemented, and what the benefits are estimated to be. Both of these should be quantified.

**From: Nicholas Westley**

Sent: 22 June 2011 10:20

To: Kofi Kramo

Subject: Response to CPD consultation

Q1 Do you think that the fundamental approach to CPD requirements should continue to be based on a system defined by the number of hours of CPD undertaken annually?

YES

Q2 Do you agree with the proposed new approach for CPD that will, as a single but five-fold strategy (1) increase the range of approved CPD activities; (2) increase the number of CPD hours per annum; (3) raise the standard of record-keeping; (4) simplify the system of reporting, and (5) simplify enforcement of the CPD Regulations?

NO

Q3 Do you agree that with the more flexible definition of CPD (Report paragraph 117) the required number of hours should be increased from 12 to 24 hours per annum?

NO

Q4 Do you think that (if more hours are required) acceptable activities should include private study, relevant professional and personal skills, and a wider range of training activities than is currently accepted?

YES

Q5 Do you agree that there should be no compulsory CPD topics for established practitioners, but a balance of activities must be undertaken?

YES

Q6 Do you consider that the current system of applying for extensions of time should be continued?

YES

Q7 Do you agree that there should be no waivers of CPD requirements for barristers who wish to retain their practising certificates?

NO - waivers should be permitted under certain circumstances.

Q8 Has the system of accreditation of CPD providers and courses by the BSB outlived its usefulness, indicating that it should be replaced by the proposed system of barristers recording their own ‘verifiable’ and ‘nonverifiable’ activities?

MAYBE

Q9 Would a new system based on a barrister’s Declaration on application for the renewal of the practising certificate, together with retention by the barrister of a Portfolio recording CPD activities (for monitoring and sampling purposes) be an effective means of ensuring CPD compliance?

MAYBE

Q10 Should the New Practitioners’ Programme be retained substantially in its present form but based on an annual return as opposed to over a three year period?

YES

Q11 Should the Forensic Accounting Course be retained substantially in its present form (but with some improvements to content and delivery)?

YES

Q12 Do you have any other comments on any of the recommendations or the proposed new system as detailed in Chapter XVI of the Report or in the draft Handbook?

NO

**From: Andrew Hallworth**

Sent: 27 June 2011 13:25

To: BSB Contact Us

Subject: CPD

Dear Sir/Madam

I am against any increase in CPD hours. 12 hours is enough. The only real beneficiary will be the course provider charging yet greater fees to barristers who are in essence now working for 75% rates.

Please explain this to the proposed course providers. If they are willing to provide points for free, this would be a different proposition. Are they?

Also, why should all barristers, regardless of experience, be subject to the same increase? Surely an experienced practitioner can be trusted to manage his own education. If not, the relevant tribunal will make its opinions clear. There is no need for CPD points to take the tribunal's place.

Regards

Andrew Hallworth

Carmelite Chambers

**From: Godwin Busuttil**

Sent: 28 June 2011 16:22

To: Kofi Kramo

Subject: CPD Consultation - response

Importance: High

This is the response to the Consultation of Godwin Busuttil, Barrister, 5RB.

Q1 Do you think that the fundamental approach to CPD requirements should

continue to be based on a system defined by the number of hours of CPD undertaken annually?

Yes.

Q2 Do you agree with the proposed new approach for CPD that will, as a

single but five-fold strategy (1) increase the range of approved CPD

activities; (2) increase the number of CPD hours per annum; (3) raise the

standard of record-keeping; (4) simplify the system of reporting, and (5)

simplify enforcement of the CPD Regulations?

Don’t agree with (2), but otherwise agree. For busy established practitioners 12 CPD hours is quite enough.

I also believe that established barristers should be permitted to ‘bank’ or carry forward CPD points

accrued in a particular year for a period of 3 years.

Q3 Do you agree that with the more flexible definition of CPD (Report

paragraph 117) the required number of hours should be increased from

12 to 24 hours per annum?

No. I strongly disagree.

Q4 Do you think that (if more hours are required) acceptable activities

should include private study, relevant professional and personal skills,

and a wider range of training activities than is currently accepted?

I don’t think more hours are required. Nor do I think that CPD should encompass

activities of the nature described.

Q5 Do you agree that there should be no compulsory CPD topics for

established practitioners, but a balance of activities must be undertaken?

Agreed that there should be no compulsory CPD topics for established practitioners.

No problem in principle with the idea of a ‘balance of activities’ but it depends on exactly

what it means.

Q6 Do you consider that the current system of applying for extensions of

time should be continued?

Indifferent.

Q7 Do you agree that there should be no waivers of CPD requirements for

barristers who wish to retain their practising certificates?

Agreed. It’s more important that barristers who are not in practice on a day-to-day basis

but are holding themselves out as barristers undertake CPD as a condition of retaining

their practising certificates. There is also a case to be made that it is these individuals

who should do more CPD.

Q8 Has the system of accreditation of CPD providers and courses by the

BSB outlived its usefulness, indicating that it should be replaced by the

proposed system of barristers recording their own ‘verifiable’ and ‘nonverifiable’

activities?

The existing system of accreditation is cumbersome. I’m not convinced that the proposed system

is entirely satisfactory either.

Q9 Would a new system based on a barrister’s Declaration on application

for the renewal of the practising certificate, together with retention by the

barrister of a Portfolio recording CPD activities (for monitoring and

sampling purposes) be an effective means of ensuring CPD compliance?

Possibly.

Q10 Should the New Practitioners’ Programme be retained substantially in its

present form but based on an annual return as opposed to over a three

year period?

The New Practitioners’ Programme should certainly be retained substantially in its present form.

Not sure re the merits of the proposed move to an annual return.

Q11 Should the Forensic Accounting Course be retained substantially in its

present form (but with some improvements to content and delivery)?

Yes.

Q12 Do you have any other comments on any of the recommendations or the

proposed new system as detailed in Chapter XVI of the Report or in the

draft Handbook?

No.

Godwin Busuttil

5RB

Barristers

**From: Simon Molyneux**

Sent: 29 June 2011 10:48

To: Kofi Kramo

Subject:

Dear Sir

In response to the consultation regarding CPD points I would like to register my opposition to any increase in the hours required.

The proposal is unnecessary, and a further financial burden on criminal legal aid practitioners.

Yours

Simon Molyneux

Carmelite Chambers

**From: Andrew Rosemarine**

Sent: 30 June 2011 10:51

To: Kofi Kramo

Subject: STRONGLY AGAINST ANY INCREASE IN COMPULSORY CPD, especially for PRACTITIONERS WITH 3 LAW DEGREES

Importance: High

letter attached for Baroness Deech: please pass to her

STRONGLY AGAINST ANY INCREASE IN COMPULSORY CPD, especially for PRACTITIONERS WITH 3 LAW DEGREES

Dear BSB,

1. The barrister knows that he needs to prepare himself properly for his actual instructions always; otherwise he risks the end of his career. He should be trusted to increase his professional development (beyond present requirements) as he himself best knows his own needs, rather than have imposed on him a mandatory one-number-fits-all increase.

2. The nature of individual practices is so varied, it is impossible to predict an exact ideal amount of CPD for all. Mandatory increases are artificial, and waste time of the barrister in extra administration: drastic increase in regulation is becoming oppressive to many.

3. Conclusion: it is unjust to enforce an increase. A fortiori, those barristers who prepared very broadly for practice with years of full-time additional legal studies, should not be forced to increase obligatory CPD. Additionally, such barristers are particularly likely to study whatever is necessary to them on their own initiative, as they have demonstrated keenness to study law, way beyond the requirements of practice.

4. Concrete example: a barrister has 3 law degrees (Oxford, Brussels, Oxford) and completed 2 sets of professional law exams to qualify in 2 different jurisdictions. Because of these, he has spent many times more hours of additional legal studies than whatever sum BSB might ever impose, and passed legal exams for all of these proving expertise (beyond anything BSB requires.) Why insist on yet further mandatory CPD on such a barrister?

One appreciates that the proposed increase is well-intentioned, but it is one step too far.

Yours sincerely,

Andrew M Rosemarine, andrew@rosemarine.co.uk

MA (Law, Oxon) BCL (Law Postgrad, Oxon) LicSpecDrEur (Brussels, ULB)

Chambers of A. M. Rosemarine

To Baroness Deech, BSB 30 June 2011

**Mandatory CPD should not be increased at all for any barrister,**

**and certainly not for particularly well qualified ones (eg with 3 law degrees)**

Dear Baroness Deech,

1. The barrister knows that he needs to prepare himself properly for his actual instructions always; otherwise he risks the end of his career. He should be trusted to increase his professional development (beyond present requirements) as he himself best knows his own needs, rather than have imposed on him a mandatory one-number-fits-all increase.
2. The nature of individual practices is so varied, it is impossible to predict an exact ideal amount of CPD. Mandatory increases are artificial, and waste time of the barrister in extra administration: drastic increase in regulation is becoming oppressive to many.
3. **Conclusion**: it is unjust to enforce an increase. A fortiori, those barristers who prepared very broadly for practice with years of full-time additional legal studies, should not be forced to increase obligatory CPD. Additionally, such barristers are particularly likely to study whatever is necessary to them on their own initiative, as they have demonstrated keenness to study.
4. **Concrete example**: a barrister has 3 law degrees (Oxford, Brussels, Oxford) and completed 2 sets of professional law exams to qualify in 2 different jurisdictions. Because of these, he has spent many times more hours of additional legal studies than whatever sum BSB might ever impose, and passed legal exams for all of these proving expertise (beyond anything BSB requires.) Why insist on yet further mandatory CPD on such a barrister?

One appreciates that the proposed increase is well-intentioned, but it is one step too far.

Yours sincerely,   
Andrew M Rosemarine, andrew@rosemarine.co.uk  
MA (Law, Oxon) BCL (Law Postgrad, Oxon) LicSpecDrEur (Brussels, ULB)  
Chambers of A. M. Rosemarine

**From: Rupert Reed**

Sent: 30 June 2011 13:52

To: Kofi Kramo

Subject: BSB Review of CPD Requirements

I am grateful for the opportunity to respond on the sole issue of the total number of hours (‘How much CPD?’).

I am in general supportive of the 12-hour CPD requirement. In my view, in encourages barristers to attend specialist bar association events that improves both awareness of new developments and collegiality.

However, I have yet to meet a barrister who believes that, having now digested 12 hours over a number of years, the requirement should be doubled to 24 hours. Similarly, I do not understand the threat that ‘we suspect the public will not think 12 hours are long enough’. This seems to be a submission based on mere assertion. My own strong suspicion would be that the public would only take the view that barristers should be required to complete 24 hours of CPD training per year if they were strongly led in the relevant question. No other arguments of substance seem to be made on behalf of the proposals.

The comparison with other professions, and in particular the medical profession, is entirely false. Every time I open my White Book (this year’s edition), and every time I search for authorities on a particular point or read cases, I am bringing my legal knowledge up to date. Every time I am in Court, and I experience good advocacy on the part of another Counsel, or realise that I could have better assisted a judge by doing something differently, I am improving my legal skills.

My mother, on the other hand, was a dentist. If she did not read her dental magazines and attend the necessary courses, she fell behind. She would simply carry on using old techniques and old drugs, because there was no way that she would be exposed to new techniques and drugs in the course of her day to day practice. A significant amount of CPD training was therefore fundamentally important to ensuring that she remained up to date.

I’m afraid to say that there is significant suspicion at the Bar that those with most to gain from making CPD requirements more significant and complex are the growing number of providers of continuing legal education, and those who implement the bureaucracy that has grown up around them.

Insofar as we increase the costs of practice at the Bar, then we make barrister’s more expensive for the purposes of their competing with solicitors and globally for legal work, and we further restrict access to the legal profession. No consideration appears to have been given to these issues in ‘How much CPD?’.

Rupert Reed

**From: Alan Gardner**

Sent: 30 June 2011 14:24

To: Kofi Kramo

Subject: CPD consultation

Dear Sir/Madam,

I wish to respond to the current CPD consultation by indicating my opposition to an increase in the number of CPD hours required each year.

The suggested increase, from 12 to 24 hours, is a very significant one. It would add greatly to the burden on the self employed profession, at a time when we are beset by an almost endless stream of new regulations and costs. Just to give two examples of current or imminent extra cost burdens: (i) the self employed profession has been required to pay extra Bar Council subscription fees to make up a shortfall in pensions for Bar Council staff members, and (ii) the imminent Quality Assurance Scheme for Advocacy will impose yet another extra cost burden on the profession.

The CPD requirements have spawned an industry of sometimes poor quality organisations peddling lectures, seminars and legal knowledge in all its guises. It is always possible to complete much of one’s CPD requirements by undertaking cost-free activities, but such a substantial increase in the requirement as is proposed would make it inevitable that practitioners would have to pay to complete their quota. I do not think we bear direct comparison with many other professions because of the unique self employed nature of the Bar: large organisations routinely provide in-house training and seminars, whereas it is a commensurately greater burden for the self employed person to undertake such activities.

My firm view is that the current 12 hour requirement for the Bar is perfectly adequate. It is rigorously enforced and it enables people to focus on quality activities to complete the hours. A doubling of the requirement would, in my view, likely lead to lower quality short cuts, such as the various pay-per-view video lectures, multiple choice exams and the like which are on offer. If there is to be an increase, why not confine it to the 16 hours which, as I understand it, the solicitors’ profession are required to undertake?

Yours faithfully,

Alan Gardner

1 King’s Bench Walk

**From: Edward Nugee QC**

Sent: 30 June 2011 16:36

To: Kofi Kramo

Subject: CPD

I have received an email inviting views on the proposal to increase the number of CPD hours per year demanded of practising barristers, whatever their seniority, from 12 a year to 24 a year.

I think this increase is unnecessarily burdensome. At the age of nearly 83, my practice is naturally winding down, and is now largely confined to advisory work on charities, trusts and basic land law (on which I recently wrote an article which was published in the LQR).. I find that attendance at the annual Chancery Bar Association Conference and the annual Property Bar Association Conference, which between them cover more than 12 hours, together with my reading of recent cases, keeps me pretty well up to date on those subjects; and I also read, and contribute to, Law Commission papers on these and similar subjects (for which I think no CPD hours are allowed – at any rate I have not bothered to claim any). On most cases on which I receive instructions I do check the most recent updates on Lexis-Nexis, for both statutes and cases, and I am not conscious of having missed anything of significance during the past few years in what I have written.

I do go to some of the ChBA lectures or seminars, and occasionally to IALS lectures, taking my CPD points up to about 16-18 a year in recent years. I get notices of a lot of lectures, but not very many of them are relevant to my work. I should not find it easy to find 24 CPD hours worth among the lectures of which I have received notice recently; and with my wife in need of constant care, much of which I provide, I should prefer not to extend my working hours beyond 6 pm more often than is necessary.

You mention that 12 hours CPD averages one hour a month; but in fact several lectures or seminars last 1½ hours, and there is discussion afterwards, so that the average time taken is already more like 2 hours.

Would you please register my objection to the BSB’s proposal. I approve of the 12 hour requirement, which is nicely met by the ChBA and PBA conferences. 24 hours would in my opinion be an unjustifiable imposition.

Edward Nugee QC

**From: Patrick Rappo**

Sent: 04 July 2011 15:45

To: Kofi Kramo

Subject: Re CPD Review

To whom it may concern

I write this email in response to the recent CPD review, it is a personal response and not one sent on behalf of my employers the Serious Fraud Office

In principle I have no objection to the division of activities into verified and non-verified, and have no complaints as to the large part of the report

My sole objection relates to the total number of points that need to be acquired for each CPD year which seems manifestly excessive for both employed and self employed bar alike, and impacts significantly upon the employed public sector bar:

There appears to be no credible rational for increasing the hours from 12 to 24, nor any evidence as to why this would improve standards, nor any evidence to suggest that the acquisition of 12 points of CPD has caused standards to fail.

As the Civil Service is facing extraordinary cutbacks, funding for attendance on externally run courses which provide CPD points is being slashed, in many departments to zero.

This difficulty is amplified as there are often insufficient courses run internally to make up the deficit.

As a result the only way that public sector barristers will be able to fulfil a 24 point requirement would be to pay privately, and to attend during ones out of work hours, or take unpaid leave to attend day time courses.

This impacts heavily upon those in the publicly funded sector, whose wages are significantly less than many at the self employed bar, and who are unable to set off the price of the courses against tax, as you would be able to do whilst self employed.

Furthermore those of us with families will also be significantly affected as courses are often run in the early evening or at weekends which has a knock on effect on childcare.

Inevitably for those of us who serve on Bar committees, conduct advocacy training, and are involved in giving lectures (be they career related or otherwise), some of which are not credited with CPD points, a choice needs to be made as to how to allocate ones family or free time. Inevitably CPD courses will come to take precedence over other such valuable commitments as those highlighted above. This will impact further on the Bar and the Inns of Court.

Kind regards

Patrick Rappo

**From: Incledon, Claire**

Sent: 05 July 2011 15:59

To: Kofi Kramo

Subject: cpd

Dear Sirs,

In brief I would just like to remind the policy makers that I think you will find that those of us who work in the regions currently find it increasingly difficult to get to sufficient cpd seminars per year. Finances are directed towards limited locally-sourced provision, whilst much of what is interesting is in main city centres. A journey to obtain over 4 cpd points to London or Birmingham is equivalent to 2 days out of the office, and high expenditure on behalf of the employer or private finances.

I am 20+ years call and currently have to obtain 12 cpd. I fail to understand the need to attend more of these sessions, remote access to research can be easily obtained without it becoming a pre-requisite.

Claire Incledon

Principal Advocate

Pembrokeshire County Council

**From: steven gee**

Sent: 07 July 2011 11:17

To: Consultation

Subject: Paras 118-120 of Consultation

Dear Consultation,

The Bar are involved with dealing with the law intimately as part of their profession. This is carried on daily. There are serious disadvantages to imposing more and more regulation on the profession. There are extra costs which have to be passed on to the public, fees are less competitive in the international arena (e.g international commercial arbitration where competitors are foreign lawyers) the profession is less attractive for entrants from disadvantaged groups, barristers are taken away from their families including young children. These have to be taken into account. Paragraphs 118-120 does not mention them- regulation imposing more and more burdens on barristers including parents of young families and those giving their time pro bono, is not self evidently a good way forward.

Based on my experience the case for increasing the 12 hours should be firmly rejected. It will cause serious disadvantages for barristers their families those who receive pro bono services and operate as a further barrier for would be entrants to the profession. CPD regulations should not be amended. I have discussed this with other mambers of my chambers who share this view,

best wishes,

Steven Gee QC

**From: Elaine Palser**

Sent: 11 July 2011 17:16

To: Consultation

Cc: Elaine Palser

Subject: CPD consutation - answers to questions

1. No view. (I don't consider there should be any CPD requirements. I am quite able to keep up to date without being monitored and find the CPD process quite demeaning.)

2. No.

3. No. (12 hours is more than enough interference. I agree with more flexibility, but not with more hours.)

4. Yes. (But I find the suggestion that "private study" should be monitored to be quite extraordinary and gross intereference.)

5. Yes to the first part, no to the second.

6. No. (I would advocate the dental or Singapore approaches rather than fixation on a 12 month period.)

7. No.

8. Yes.

9. Yes to the first question, but no to a detailed portfolio. A brief list of activities as is currently produced each year is fine.

10. No view.

11. Yes.

12. I consider the whole CPD process to constitute an unwarranted interference in a barrister's practice and it should be scrapped. The worthwhile learning comes through practice.

**From: Geraint Jones**

Sent: 14 July 2011 22:18

To: Kofi Kramo

Subject: CPD Consultation Response

Sir,

My responses top the 12 questions posed in the Consultation are as follows :

1. No. The mechanistic clocking up of a given number of hours (whatever that figure might be) is no sensible guide to the value of any continuing education. For example, a person can have a few drinks, attend an evening lecture (worth 2 CPD points), have a snooze throughout the lecture and then mechanistically clock up two points. That is worthless. Similarly, a person can buy a video accredited for CPD, play it whilst giving it little or no attention and still clock up hours/points. In my view the whole CPD system is a pointless; designed as it was as a sop to the last labour government that had a bee in its bonnet about continuing education.

2. (1) Yes, if an increase there must be.

(2) No. This is plain mad. Barristers are judged daily by those who instruct them and rely upon their good name to attract further work. To increase the hours from 12 to 24 is a wholly unnecessary burden to impose upon practitioners who have new pressures placed upon them from all angles. It will increase the default rate. CPD is in any event meaningless as a means of further or continuing education. Lectures etc attended during the evening after a hard day in court are an invitation for a snooze, not concentrated learning. The BSB may be showing its macho credentials by imposing such new onerous, but quite worthless, requirements, that, in reality will do little to improve professionalism and/or skills.

(3) Does the BSB really need any better excuse to build up its empire of employees - at the expense of the Bar. It sounds like jobs for the boys to those of us who have to work for a living. The proposal to improve record keeping (which in English translates to increasing its staff) will come as little surprise to many at the Bar who perceive that the BSB is a little empire in its own right, spending (or waiting) other people’s money without any real fiscal discipline or regard for those of us who fund it via their Bar Council (compulsory) payments.

(4) It’s simple already for anybody with half a brain.

(5) Simplify enforcement ? The BSB seems to enjoy making money out of those who may need a dispensation or additional time. Why should BSB want to spoil such a gravy train.

3. No. I am vehemently opposed; as are other most other barristers with whom I have discussed the topic. It is seen as a further bureaucratic imposition which those with a civil service mentality seek to impose upon those at the Bar who have to work ever harder to maintain a good practice and reasonable income. The need for practice preservation and a decent income is the driving force to keep us up to speed and doing a good job - not some mechanistic requirement to clock up a given number of hours. That is about as crude, unsophisticated and ineffective a system of continuing education as can be imagined. A silly and quite unnecessary increase in the hours will result in :

(a) More people snoozing through lectures that they may or may not understand (if awake), at the end of the day when they are tired and probably thinking about tomorrow’s case, and maybe after having had a few drinks to sustain them.

(b) More people self certifying meaningless activities.

(c) The system becoming even more discredited and denigrated by members of the Bar, than at present.

(d) More defaults - which the BSB may welcome given that it raises revenue therefrom.

(e) Another burden being forced upon responsible professionals who already work under the strictest kind of professional discipline - that is, knowing that they have to be at the top of their game if they are to attract future work.

4. Yes – because it will make it easier for the system to be seen for what it is - a discredited waste of time. The more meaningless activities that can be used to clock up hours towards the additional unnecessary burden, the better. The more that that happens, the more the whole system will be seen as the charade that it is.

5. Yes.

6. Yes – but the imposition of fees is an unnecessary burden, especially on younger practitioners. It seems to be forgotten that these younger people are often paying off student loans; earning modest sums; trying to buy a flat or somewhere to live; and generally trying to make headway in financially challenging times.

7. No. Discretionary waivers should be available. A system that is so rigid as to exclude waivers seems arrogantly to assert that it can foresee all future circumstances that night arise and can say, in advance, that they will not warrant a waiver. Now, that really is arrogant.

8. Yes. Much better that barristers should be able to refer to verifiable and non-verifiable activities. That way, some of the proposed increase in the burden can be mitigated. At least barristers will then be able to self certify non verifiable useless activities and add them to verifiable useless activities (or even useful activities).

9. Probably not – but would be no worse than the present system. The one advantage might be that it would militate against the BSB increasing its staff (on the pretext of needing more staff for verification purposes - thus increasing its wages bill and then demanding yet more money from the Bar Council to run its self perpetuating, but not very useful, empire).

10. Probably.

11. Yes – useful to be able to handle accounts, because then barristers are better equipped to check on how much of their money is squandered by the BSB on useless bureaucratic activities truly representative of civil servants at their most profligate.

12. Yes, It is misconceived well intentioned nonsense – but nonsense it is. However, I have no doubt that it will commend itself to those with a civil service mentality and those who have not competed in the real world by running their own business.

Geraint Jones Q.C.

14/7/11.

Note : I have not defaulted in CPD requirements and/or ever needed to seek a dispensation. My views are not coloured by me having had any problems with the BSB concerning CPD or otherwise. There is no element of “sour grapes” in the views expressed. My views are based upon genuine cynicism towards and contempt for the present system

**From: McCahon David**

Sent: 13 July 2011 17:50

To: Kofi Kramo

Subject: CPD Comment

I am a lawyer working for Barclays in its Barclaycard business. I attend many courses during the year which are run by our panel law firms on matters relevant to my area of law.

I have always assumed that the law firms always got accredited for the BSB as well as the SRA. However, when The BSB challanged my CPD submission for 2010, I discovered that this is not always the case. I have had to pay to have a course accredited by the BSB that was already accredited by the SRA. No-one else in my team has to do this, even though I am doing exactly the same type of work in the team, as the courses are all always accredited through the SRA.

I have spoken to a few of the law firms in the context of courses I have attended this year. The feedback is that getting Bar Standards Board accreditation is much more bureaucratic than getting SRA accreditation for CPD points, as the SRA allows the leading law firms to self-police, whereas the BSB itself vets each talk in advance, which requires submitting both an application (setting out e.g. training objectives) and the talk some weeks in advance. That is not always practicable due to the time constraints and the cost when there are usually no in-house barristers attending the training.

This is a real problem, particularly when all the training that I see advertised through the Counsel magazine or on the BSB website is much more relevant for practising barristers rather that in-house barristers.

Happy to discuss further.

Regards

David

David McCahon | General Counsel

**From: Mr Mills**

Sent: 19 July 2011 15:16

To: karimkhalil@onepaper.co.uk; nvqc@4bb.co.uk; w.hughes@9-12bellyard.com

Cc: Kofi Kramo

Subject: Individual response to CPD Points consultation

Please find my response attached.

Regards,

Corey Mills,

Becket Chambers

Response of Corey Mills to Consultation Paper on the proposed new system for CPD, as part of the Review of Continuing Professional Development

Part 3 CONSULTATION QUESTIONS

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

Q1 Do you think that the fundamental approach to CPD requirements should continue to be based on a system defined by the number of hours of CPD undertaken annually?

Answer

*Yes.*

Q2 Do you agree with the proposed new approach for CPD that will, as a single but five-fold strategy

(1) increase the range of approved CPD activities;

(2) increase the number of CPD hours per annum;

(3) raise the standard of record-keeping;

(4) simplify the system of reporting, and

(5) simplify enforcement of the CPD Regulations?

Answer

*No. When in* 2008 Jonathan Hirst QC, the vice-chairman of this working group, reported to the Bar Council on the education and training events provided by the Inns, Circuits, SBAs and other institutions (Final Report November 2008), his general conclusion was that barristers were able to satisfy the current 12-hour requirement without undue difficulty or expense. If the number of CPD hours were to increase, or the areas to be covered by each barrister increased, with consequent increase in the number of hours, the CPD system would become unduly onerous to fulfill, and unacceptably expensive in a time of static or reducing fees and the abolition of public funding. The current system for established practitioners is 12 hours accredited. Each course is accredited for no more than 5-5½ hours per day. The individual barrister is therefore required to

(1) book him or herself out of Court for each course, which causes problems with part-heard cases;

(2) Forego any earnings during those 3 days in order to attend the day long courses;

(3) Pay for each course, at an individual cost of £200-£375 per day.

Attendance at courses is already expensive, increasing the number of areas to cover and/or hours to fulfill will increase each barristers overheads. Such an increase in costs cannot be justified. We will inevitably have to pass these costs on to clients. If CPD hours incorease, is there general agreement that fees must incorease commensurately? Will the Ministry of Justice pay more for what remains of publicly funded work? Will solicitors and lay clients pay more?

Provincial practitioners, of which I am one, are unable to attend courses provided in London by the Inns, without considerable difficulty. The availability of courses within a reasonable traveling distance of me is not what I would call “wide.” This put an unreasonable burden on provincial practitioners, which is discriminatory.

Q3 Do you agree that with the more flexible definition of CPD (Report paragraph 117) the required number of hours should be increased from 12 to 24 hours per annum?

Answer

Paragraph 89 states, inter alia,

“There is a discernible tension between the need to recognise the value of the full menu of genuinely educational activities and the need to ensure that practitioners comply with requirements.”

I have no idea what this means. It certainly cannot be used to justify an increase in hours required or areas of work required.

Paragraph 90 states

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

· increases the range of approved CPD activities;

· correspondingly increases the number of CPD hours which established

practitioners must undertake each year;

· raises the standard of record-keeping;

· simplifies the system of reporting; and

· simplifies enforcement of the CPD Regulations.”

The logic of this reasoning if flawed. If these are indeed the purposes of CPD, then logic dictates that CPD hours should be increased even further, as the more CPD required, the better the professional development, skills, up-to-date knowledge, public confidence etc. It is too simplistic. A point will be reached where benefit to each practitioner trails off, and becomes counter-productive.

Where is the evidence base for these assumptions? All that is quoted in the report is anecdotal.

Q4 Do you think that (if more hours are required) acceptable activities should include private study, relevant professional and personal skills, and a wider range of training activities than is currently accepted?

Answer

Yes, provided relevant to the profession or the individual, or self-improving.

Q5 Do you agree that there should be no compulsory CPD topics for established practitioners, but a balance of activities must be undertaken?

Answer

Not necessarily. What sort of balance? Would this include flower arranging for a busy civil or criminal practitioner, if it was self-improving?

Q6 Do you consider that the current system of applying for extensions of time should be continued?

Answer

Absolutely. It is not always possible to prove the required number of CPD hours have been fulfilled. As the report itself notes, sometimes forms can be lost on the way to the BSB, sometimes accreditation takes time to be provided. Sometimes, an individual is so busy, that s/he is unable to complete the required hours in a 12 month period. Sometimes CPD can be overlooked, and then time runs out, when no course are available. This should not result in the individual being punished.

Q7 Do you agree that there should be no waivers of CPD requirements for barristers who wish to retain their practising certificates?

Answer

I am not sure what this means. If CPD requirements are not fulfilled in a 12 month period, an extension can be applied for. The hours still have to be completed. Provided the individual is able to complete the required number of hours within the extended 12 month period, there should be no question of a practising certificate being withdrawn.

Q8 Has the system of accreditation of CPD providers and courses by the BSB outlived its usefulness, indicating that it should be replaced by the proposed system of barristers recording their own ‘verifiable’ and ‘non- verifiable’ activities?

Answer

Yes. I would adopt the points stated in paragraph 95 of the report on this point. Why should private study be excluded. If is how we all read law after all.

Q9 Would a new system based on a barrister’s *Declaration* on application for the renewal of the practising certificate, together with retention by the barrister of a *Portfolio* recording CPD activities (for monitoring and sampling purposes) be an effective means of ensuring CPD compliance?

Answer

Yes.

Q10 Should the New Practitioners’ Programme be retained substantially in its present form but based on an annual return as opposed to over a three year period?

Answer

Yes.

Q11 Should the Forensic Accounting Course be retained substantially in its present form (but with some improvements to content and delivery)?

Answer

Yes.

Q12 Do you have any other comments on any of the recommendations or the proposed new system as detailed in Chapter XVI of the Report or in the draft Handbook?

Answer

None, other than those stated above.

Corey Mills,

established practitioner,

Becket Chambers,

Canterbury.

19.7.11

------ Forwarded Message

**From: Clerks <Clerks@Becket-Chambers.co.uk>**

Date: Tue, 19 Jul 2011 14:07:18 +0100

To:

Conversation: CPD Points

Subject: FW: CPD Points

From: Natasha Foy [mailto:NFoy@BarCouncil.org.uk]

Sent: 19 July 2011 13:27

To: Natasha Foy

Cc:

Subject: CPD Points

Dear Circuit Member

CPD POINTS

As you know, there is currently a proposal that the CPD requirements for members of the Bar should be increased substantially. It is important that there is a co-ordinated response to this, as well as individual responses.

Nicholas Hilliard QC has asked Karim Khalil QC to chair a committee to represent the interests of the South Eastern Circuit. Karim is joined by Nicholas Vallios QC and William Hughes.

Please send your response, however brief, to any of the committee members, so that they can present the strongest case on your behalf. Their email addresses are:

Karim: karimkhalil@onepaper.co.uk

Nicholas: nvqc@4bb.co.uk

William: w.hughes@9-12bellyard.com

To view the Bar Standards Board consultation, please click here <http://www.barstandardsboard.org.uk/consultations/OpenConsultations/CPDconsultation/> <http://www.barstandardsboard.org.uk/consultations/OpenConsultations/CPDconsultation/> .

Yours faithfully

Natasha

Natasha Foy

Events and Administration Co-ordinator

The South Eastern Circuit

289-293 High Holborn

**From: David Emanuel**

Sent: 19 July 2011 23:03

To: Kofi Kramo

Subject: CPD

I have to say it is with dismay that I have read of the new proposal that we should double our CPD hours requirement.

In my opinion the whole CPD programme is a total waste of time.

There is no need for this regimented approach to development.

In our self-employed profession where we work very long hours the requirement is already a total waste of time. It impinges on what free time does exist – the only time to undertake these hours is in the evenings or at weekends when one is working quite enough already.It is a further drain on our already fast-diminishing income. The fact that it is trumpeted as a valuable source of income for the BSB days a lot about the true purpose behind CPD for the Bar in my opinion.

Some of the courses may be of interest but they in no way add to the knowledge that is a pre-requisite to surviving in this highly competitive market place already.

The reality is that the only way to stay at the top in this profession is to be aware of all the latest changes in the law and the most recent case law.

Going to a lecture adds nothing and the thought that I would have to give up 24 hours of my life per year to this complete waste of time when I have to pay silly money just so some bureaucrat can tick a box to reassure the public that I am cutting edge is frankly sickening.

None of the clients I have represented have in any way benefited from my having wasted my free time in this way.

No one is in anyway reassured that barristers are any good because they tick this 12 hours box – it is because the standards in our profession are incredibly high because we are conscientious professionals who work hard, keep uptodate and have the highest standards as a matter of course.

The suggestion that CPD raises confidence in the public about us is totally misconceived – no one in the public has a clue that for 12 hours a year we sit and watch videos or sit through expensive courses and as for the laughable suggestion that CPD promotes an ethos of professional collegiality one really does have to wonder who comes out with this sort of babble. No it does not, it is boring and a waste of time and money. Maybe some people get a warm feeling of belonging from sitting in a room with their colleagues. I do not.

Thank you so much for listening to my views on this subject.

I do hope that attention is paid to them.

David Emanuel | Barrister

**From: Michael Paulin**

Sent: 19 July 2011 21:12

To: Kofi Kramo

Subject: Response to Bar Council Consultation Re CPD

Dear Sir/Madam,

I am a barrister of 5 years' call.

I am opposed to the proposal to increase the CPD requirement to 24 hours. The economic climate is such that imposing more administrative obligations upon those who are self-employed businesspeople would be an additional burden that would detract from business development. There is no need for more CPD and the current regime is more than adequate. It is difficult enough to find the time for the verifiable 12hours. An additional non-verifiable 12hours is unnecessary.

Yours,

Michael Paulin

**From:**

Sent: 20 July 2011 12:18

To: Consultation

Subject: CPD consultation

I have reviewed the proposals re increasing the CPD requirements to 24 hours.

My comments are as follows and I'd be grateful if you would record these.

1. At the moment the the 12 hour requirement means that individual practitioners have to pay for each hour - sometimes at substantial personal cost - out of their own pockets. On an hour by hour basis this can work out at as much as £75 per hour (e.g. a day seminar accruing 5 hours CPD can cost in the region of £375 plus VAT). This is an onerous financial burden, not helped by the climate of late and reduced payments for publicly funded practitioners.

2. The kind of CPD training available is often less than helpful on a year basis - i.e. there are only so many seminars on head injuries in children one can go to over a career lifetime. There are some online training seminars that require one to review current case law that is obviously highly relevant. However, any practitioner worth their salt would be maintaining currency with relevant law anyway, so CPD courses which require them to review case law is an unnecessary burden.

3. Increasing the number of hours might lead to more hours of less quality as practitioners look for ways to fulfill the requirement. It might be better to examine a way of providing more helpful training at a lower or zero cost within the current requirement of 12 hours.

If the hourly requirement is increased to 24 hours it will become increasingly difficult to find or undertake the hours for the reasons set out above. Not only this, but 24 hours over a year is a huge undertaking when so many practititioners are required now by Practice Directions to do more for less i.e. practice directions documents etc which are unpaid and have less time available in a working week.

The recent survey undertaken in relation to the Family Bar which can be viewed at http://www.kcl.ac.uk/content/1/c6/04/99/20/WorkoftheFamilyBarKingsFLBA.pdf (by Dr. Debora Price, Kings College London) found practitioners were working in excess of the 40 hour week - with 25% working in excess of 60 hours per week. A requirement of 24 hours would be a difficult burden to discharge in the year, possibly leading to practitioners undertaking course of little value to their practice just so that they can fulfill the requirement by the end of the year - not to mention the stress and health implications therein.

Judith Trustman

**From: rachael rowley-fox**

Sent: 23 July 2011 11:09

To: Kofi Kramo

Subject: 24 hours CPD

Dear BSB

I am against this proposal. 12 hours a it stands gives barristers ample opportunity to develop CPD - it is costly and time consuming. If barristers train in something specific such as mediation or public access or judicial training - then the CPD usually exceeds the requirement in any event.

Thankyou

**From: david hooper**

Sent: 23 July 2011 10:45

To: Kofi Kramo

Subject: BSB consultation

Dear BSB,

My initial response to the proposal that the CPD hours be increased from 12 to 24 was...well, understandable. However, having read this long and thorough consultation document (no CPD points provided!) I support the proposed changes.

My practice over the past several years has been entirely at the ICTR/ICTY/ ICC -- and based in Tanzania or, as at present, The Hague, and also travelling meanwhile to various crime scene areas, getting to accredited courses has been difficult. Even from the Hague it is difficult to judge the work load for a weekend and to commit not just a Saturday, or whatever, to course attendance but the travel that goes with it. The one hour CPD lectures etc are just not on. So, greater flexibility and permitted attendance at non accredited events (and none of the International Criminal Law type events held abroad seem to be accredited!) will be, for me, a practical solution to what has been an irksome problem.

I agree also that Diversity etc should be left off the list. Or else perhaps add Health and Safety.

All the best

David Hooper Q.C.

**From: Suzie Cotterill**

Sent: 26 July 2011 16:32

To: Kofi Kramo

Subject: CPD

Dear Sir/Madam

I have 2 objections to the increase in CPD requirements

1. this is a time of increased austerity at the Bar, to do verified courses has a 2 fold effect it takes one out of out and there fore no fees are earnt and second the courses do cost several hundreds of pounds.

2. They are worthwhile as a speedy updater – but they are no replacement for the proper dissemination/collation of information cases and rule changes that go on throughout the year. Competent barrister do this as a matter of good practice and compulsion for double the hours will not ensure any meaningful alteration for those that have a more relaxed attitude to updating

Those that wish to will update themselves in any event. This is a strength and merit of the independent nature of our profession

Given that there does not seem to have been any real increase in complaints – those that some sort of CPD attendance may have avoided – nor any reduction with the advent of CPD- I do wonder at the need to alter the system and put an extra burden on the Bar.

Yours faithfully

Suzannah Cotterill

Lamb Building

**From: Michelle.Hoque**

Sent: 25 August 2011

To: Kofi Kramo

Subject: Re: CPD Consultation Review

Dear Sirs

I would like to make a comment on the current proposal to increase the CPD requirement to 24 hours.

It seems to have doubled the existing requirement which was only brought in, in the last 10 years or so.

It is 8 hours higher than the 16hour CPD requirement for solicitors.

It will be very costly to all practitioners, in my particular circumstance I am a salaried earner and my training is paid for by my place of employment who have advised that due to budget cuts all training is limited to £150 per annum.

If CPD points are increased to 24 CPD hours then I shall have a very difficult time in complying, in addition to the number of hours that will require me to be away from work in order to fulfil the requirement.

It seems to be an excessive number and the only people to gain will be trainers and the Bar Council in terms of the costs involved in purchasing training as well as the costs involved for the Bar Council to check the training if the provider has not logged their training with the Bar Council prior to the course as I have experienced in getting my 2010 points verified.

I would ask the Chair to reconsider the number of CPD points required and if an increase is necessary then to bring it in line with the Law Society. The risk of increasing the points as currently proposed is that many practitioners who may be financially struggling will be imposed upon further in having to do more training.

Kind Regards

Michelle Hoque I Senior Planning Lawyer I Newham Legal & HR Services

Resources Directorate

**From: steven gee**

Sent: 03 August 2011 00:11

To: Liz Prats

Subject: Re: Paras 118-120 of Consultation

Dear Liz Prats,

Thank you for your email. I would like to add the reference below to my response,

best wishes,

Steven Gee QC

Any intelligent fool can make things bigger and more complex... It takes a touch of genius - and a lot of courage to move in the opposite direction.

Albert Einstein <http://uk.mg.bt.mail.yahoo.com/quotes/quotes/a/alberteins148840.html>

From: Liz Prats <LPrats@BarStandardsBoard.org.uk>

To:

Sent: Friday, 29 July 2011, 17:51

Subject: RE: Paras 118-120 of Consultation

Thank you for your response to the consultation on CPD. Please note that the consultation period has been extended until 31 October 2011. Responses will be analysed once the consultation has closed.

CPD Department, Education Standards

Bar Standards Board

289-293 High Holborn, London, WC1V 7HZ

Phone: 020 7611 1444

Fax: 020 7831 9217

From: steven gee

Sent: 07 July 2011 11:17

To: Consultation

Subject: Paras 118-120 of Consultation

Dear Consultation,

The Bar are involved with dealing with the law intimately as part of their profession. This is carried on daily. There are serious disadvantages to imposing more and more regulation on the profession. There are extra costs which have to be passed on to the public, fees are less competitive in the international arena (e.g international commercial arbitration where competitors are foreign lawyers) the profession is less attractive for entrants from disadvantaged groups, barristers are taken away from their families including young children. These have to be taken into account. Paragraphs 118-120 does not mention them- regulation imposing more and more burdens on barristers including parents of young families and those giving their time pro bono, is not self evidently a good way forward.

Based on my experience the case for increasing the 12 hours should be firmly rejected. It will cause serious disadvantages for barristers their families those who receive pro bono services and operate as a further barrier for would be entrants to the profession. CPD regulations should not be amended. I have discussed this with other mambers of my chambers who share this view,

best wishes,

Steven Gee QC

**From: Welch Bryan**

Sent: 18 August 2011 14:49

To: Kofi Kramo

Subject: CPD consultation

Part 3 CONSULTATION QUESTIONS

Q1 Do you think that the fundamental approach to CPD requirements should

continue to be based on a system defined by the number of hours of

CPD undertaken annually?

yes

Q2 Do you agree with the proposed new approach for CPD that will, as a

single but five-fold strategy (1) increase the range of approved CPD

activities; (2) increase the number of CPD hours per annum; (3) raise the

standard of record-keeping; (4) simplify the system of reporting, and (5)

simplify enforcement of the CPD Regulations?

No.

Q3 Do you agree that with the more flexible definition of CPD (Report

paragraph 117) the required number of hours should be increased from

12 to 24 hours per annum?

No

Q4 Do you think that (if more hours are required) acceptable activities

should include private study, relevant professional and personal skills,

and a wider range of training activities than is currently accepted?

No

Q5 Do you agree that there should be no compulsory CPD topics for

established practitioners, but a balance of activities must be undertaken?

No

Q6 Do you consider that the current system of applying for extensions of

time should be continued?

Yes

Q7 Do you agree that there should be no waivers of CPD requirements for

barristers who wish to retain their practising certificates?

Don't know

Q8 Has the system of accreditation of CPD providers and courses by the

BSB outlived its usefulness, indicating that it should be replaced by the

proposed system of barristers recording their own ‘verifiable’ and ‘nonverifiable’

activities?

yes

Q9 Would a new system based on a barrister’s Declaration on application

for the renewal of the practising certificate, together with retention by the

barrister of a Portfolio recording CPD activities (for monitoring and

sampling purposes) be an effective means of ensuring CPD compliance?

yes. We are a learned profession and expect individual responsibility fro members.

Q10 Should the New Practitioners’ Programme be retained substantially in its

present form but based on an annual return as opposed to over a three

year period?

Don't know

Q11 Should the Forensic Accounting Course be retained substantially in its

present form (but with some improvements to content and delivery)?

Don't know

Q12 Do you have any other comments on any of the recommendations or the

proposed new system as detailed in Chapter XVI of the Report or in the

draft Handbook?

The 165 page report is far too long for practitioners to have the time to read.

This represents my personal views and not those of my employer

Bryan Welch

**From: Barton, Charles**

Sent: 15 August 2011 17:55

To: Kofi Kramo

Subject: [UNCLASSIFIED] Review of Continuing Professional Development

I am writing to respond to the consultation on the proposed changes to the CPD requirements for Barristers. I am responding in my personal capacity as an employed barrister (Called 1986).

I think the Report of the Working Group is impressive and well argued. I support its recommendations in principle, and would answer ‘yes’ to all the specific consultation questions 1 to 11.

In response to Question 12, there is one point I would like to make in relation to the proposed circumstances in which ‘private study’ will be capable of counting towards CPD. In the final entry in Table 6 in para 117 of the Report, and in para 2.5 of the Draft Handbook for CPD, it is made clear that reading by way of private study will not count if it is undertaken for the purpose of “providing legal services to a particular client”. It seems to me that this could potentially discriminate unfairly against employed barristers who have only one client – their employer. As all CPD activities will be required to be ‘relevant’ to the barristers’ professional practice, such activities will always tend to be undertaken, by employed barristers, for the purpose of enhancing the quality of the legal services which the barrister will provide to his or her employer. There will seldom be any other reason why such activities will be ‘relevant’ for CPD in the first place, given that the employed barrister will have no other clients who could benefit from the barristers’ professional development!

I assume this discrimination is unintended, and I would suggest that it could easily be avoided by substituting the phrase “otherwise than for the purpose of publication or providing legal services in relation to a particular case or project” for the proposed phrase “otherwise than for the purpose of publication or providing legal services to a particular client” . My proposed wording would get at the real distinction which the Working Group seem to have in mind, but in a way which does not arbitrarily penalise employed barristers who, unlike those in independent practice, have only one client.

Yours sincerely,

Charles Barton

**From: Purdasy Margaret**

Sent: 12 August 2011 18:03

To: Kofi Kramo

Subject: CPD consultation

Sirs,

I am very wary of the proposal to double the CPD requirement, even with the proposed split between verifiable and non-verifiable activities meaning that there would be greater flexibility in how the requirement could be fulfilled.

At present, it is quite possible for barristers to fulfil their 12 hours without any cost; by attending lectures, courses etc. Those with a heavily court-based practice will not necessarily find it as possible to complete 24 hours even with more flexibility as to what might count.

I do agree that it would not be helpful to have mandatory topics.

I understand that it is not always easy to become accredited by the BSB; if the process for accreditation was quick and simple, then it should be retained, with the current split between accredited and non-accredited hours remaining.

I cannot think of a better way for the CPD requirement to work apart from an annual requirement, acknowledging that this does not mean that the activities need be undertaken in a manner which is spread evenly across the year. Increasing the time available would make this more of a problem but being more precise about when they must be undertaken will be too difficult to comply with.

Regards,

Margaret Purdasy

**From: Marie Spenwyn**

Sent: 07 August 2011 12:58

To: Kofi Kramo

Subject: CPD

Re: CPD increase

I am a practitioner of 12 years call working in criminal defence.

I think the increase from 12 to 24 CPD hours a year would be unnecessary, expensive and yet another burden on legal aid practitioners already reeling from repeated cuts. I say this because we have to pay for most of the CPD hours that can count towards the total to be submitted. The CPD hours we are required to complete do not take into account the additional reading of case-law and other developments that any criminal practitioner must keep up with to be able to be abreast of sentencing and other legal issues that affect our daily work. These hours spent on journals, case reports etc will always need to be carried out and are a significant part of professional development although of course a silent one in terms of CPD hours. I take no issue with a 12 hour requirement but the increase to 24 would put a financial and time burden on practitioners which does not appear to be warranted.

yours faithfully

Marie Spenwyn

**From: Sara Cockerill**   
**Sent:** 26 September 2011 09:57  
**To:** Consultation  
**Subject:** CPD Consultation

Q1 Do you think that the fundamental approach to CPD requirements should continue to be based on a system defined by the number of hours of CPD undertaken annually?

If there is to be a CPD system (as to which I seriously doubt its utility – see answer 9 below) an hours based approach is appropriate.

Q2 Do you agree with the proposed new approach for CPD that will, as a single but five-fold strategy (1) increase the range of approved CPD activities; (2) increase the number of CPD hours per annum; (3) raise the

standard of record-keeping; (4) simplify the system of reporting, and (5) simplify enforcement of the CPD Regulations?

1. Yes, but I fundamentally disagree with requiring 50% of the hours to be “verifiable” (See answer 9, 12 below).  A simple change to 12 hours to be performed as the practitioner thinks best, would be much better.  If there are to be “verifiable” hours a much lower number is a more realistic reflection of the number of useful verifiable hours there are out there.
2. No, or not to the extent proposed.  People are more likely to approach a lower target more honestly and rigorously (particularly re “verifiable” hours).   If any increase is proposed it should be to the mid teens only – and with a low number of “verifiable” hours.
3. No.  It is a waste of time which will yield no actual improvements in compliance and impact most negatively those who best comply (see answer 9)
4. Yes, but query whether the CPD system is appropriate in any event (see answer 9).

Q3 Do you agree that with the more flexible definition of CPD (Report paragraph 117) the required number of hours should be increased from 12 to 24 hours per annum?

No. Changing the definition will make CPD more useful; at the moment one is driven to attend accredited events (similar to those which will be verifiable) which are of very marginal utility.  With the wider definition, one will be able to declare 12 hours of actually useful CPD.

Q4 Do you think that (if more hours are required) acceptable activities should include private study, relevant professional and personal skills, and a wider range of training activities than is currently accepted?

Whether or not more hours are required the range of acceptable activities should be broadened to include (in particular) private study.  The very best CPD is done by this means.  Indeed (given the very low utility of most lectures on offer)  the most efficient and productive way for most people of fulfilling their entire CPD requirement would be by private study and/or writing articles.

Q5 Do you agree that there should be no compulsory CPD topics for established practitioners, but a balance of activities must be undertaken?

There should be no compulsory topics, but there is no need to require a balance of activities to be undertaken.  What is this “balance” to be for most EP’s?  Between lectures (verifiable) and private study/writing?  Most lectures, talks and seminars are of very little practical utility as a means of CPD.  It should be left to practitioners to decide whether there is any such event or events in a particular year which are genuinely likely to assist in their CPD.  If (as is frankly quite often the case) there is not, they should be free to confine themselves to private study.  There is no limit to the amount of private study which can provide real, useful CPD.

Q6 Do you consider that the current system of applying for extensions of time should be continued?

Yes.

Q7 Do you agree that there should be no waivers of CPD requirements for barristers who wish to retain their practising certificates?

Yes.

Q8 Has the system of accreditation of CPD providers and courses by the BSB outlived its usefulness, indicating that it should be replaced by the proposed system of barristers recording their own ‘verifiable’ and ‘nonverifiable’

activities?

Yes – but query the proposed recording system (see Q 9).

Q9 Would a new system based on a barrister’s ***Declaration*** on application for the renewal of the practising certificate, together with retention by the barrister of a ***Portfolio*** recording CPD activities (for monitoring and sampling purposes) be an effective means of ensuring CPD compliance?

No (insofar as the Portfolio goes, at least).  It will be no better than the current system.  The bottom line is that there are two categories of practitioner.  Those who do, and will do CPD with or without a “system” in place, and those who don’t and won’t carry out CPD.  Under the current system the latter group find ways round the system (attending seminars/talks which they know permit sign in at the beginning of the day/talk, and then disappearing, or arriving five minutes before the close of a talk where sign in is at the end, claiming attendance at non accredited talks they didn’t actually attend, etc etc).  Under the new system they will continue to use this system, and add to it “inventive” ways with their portfolio (cases read for a hearing will appear as “private study” for example, and you can guarantee there are numerous other dodges both in operation and in the pipeline).  If there is to be a CPD system (and, in the light of (i) this fundamental division amongst practitioners and (ii) the impossibility of policing any system effectively I seriously doubt the utility of the system in practical terms), it should be based on a simple declaration.  It creates less work for those who are honest, when the more complex system will not stand in the way of those who are not.

Q10 Should the New Practitioners’ Programme be retained substantially in its present form but based on an annual return as opposed to over a three year period?

No view.

Q11 Should the Forensic Accounting Course be retained substantially in its present form (but with some improvements to content and delivery)?

No view.

Q12 Do you have any other comments on any of the recommendations or the proposed new system as detailed in Chapter XVI of the Report or in the draft Handbook?

Yes:  the division between “verifiable” and “non-verifiable” hours is highly undesirable.  It appears to be based on an assumption that “collegiality” is a desirable thing, and that collegiality is part of CPD.  I am far from convinced that it is a desirable thing per se.  Even if it is, it does not form part of CPD (see definition of CPD) – and the system for CPD (if there is to be such a system) should concentrate on the best way of delivering the best CPD for practitioners, and not on extraneous matters.  I also (frankly) seriously doubt the assumption that forcing people to go to lectures etc as part of CPD encourages collegiality.  Without CPD, people go to a lecture if they want to hear it, and are more likely to stay, mingle and discuss at the end.  Forcing these events into the straitjacket of CPD ensures there are a lot of people who are there only for points and are concentrating on getting in and out in the shortest time possible.  This “rush for the door” actually detracts from such events as ones which make for a collegiate atmosphere.

**Sara Cockerill Q.C.**

**From: Nick Singer**   
**Sent:** 15 September 2011 11:45  
**To:** Consultation  
**Cc:** Thomas Wood  
**Subject:** Response to consultation

Hi

I oppose any increase to CPD requirements.

The Bar is facing unprecedented challenges and stresses at the moment. Increasing CPD requirements will cost more and put more pressure on the already stretched Bar, particularly for those of us who are self employed. I think 12 CPD points is sufficient and ensures that I cover a great deal of material throughout the year.

Thank you

Nick Singer

42 Bedford Row Chambers

**From: Stephen Swan**    
**Sent:** 13 September 2011 08:39  
**To:** Kofi Kramo  
**Subject:** Re: CPD consultation

Dear All,

Introduction

You asked for responses to the “Review of Continuing Professional Development” published by the Bar Standards Board in June 2011.

Scope of activities covered by CPD

I am a barrister (called to the Bar by the Honourable Society of Lincoln’s Inn in Trinity Term 1983). After pupillage I re-joined the Government Legal Service in 1985 and have been an employed (practising) barrister in various civil service departments for 21 years.  Prior to call I spent 4 years in the Treasury Solicitor’s Department and I am currently an employed barrister in that same department. The views expressed are my own personal views and should not be taken as representing the views of either the Treasury Solicitor’s Department or the Government Legal Service (“GLS”).

CPD is primarily about what makes an individual a more effective practitioner (whether barrister, solicitor, or legal executive). The GLS (and indeed individual legal departments of government) has encouraged both lawyers and non-lawyers to develop transferable legal, managerial and other skills for, at least as long as I have been a civil servant (33 years this September).

Barristers whether practising from Chambers or employed require CPD in legal skills, but I do think that CPD points should be available for  so called “soft skills” such as management and leadership skills, presentation skills, coaching and mentoring, which are frankly as important to a barrister as are keeping up to date with the law in the fields or fields in which he practices.

Should the number of CPD hours be increased?

No. 12 hours is already a large commitment in terms of CPD both in terms of time and indeed money (whether to the individual barrister or his employers) and I would not want to see any increase in CPD hours. It diverts a barrister away from his or her work and is a drain on resources. It seems to me that increasing CPD hours will cause barristers  to incur additional expense at a time when we are all being called upon to tighten our belts financially. Requiring us (or our employers) to pay for more CPD hours at this time is not fair.

Were “soft skills” allowed to be taken into account in calculating CPD hours a modest increase to say 16 hours (but no more) might be acceptable.

If CPD hours are increased acceptable activities must include private study, and non legal skills (e.g. management and leadership course; presentation and interviewing skills courses).

Should certain courses  (e.g. on costs, advocacy, ethics  etc), be compulsory for all practitioners?

No. Clearly, courses on some subjects (e.g. ethics and equality & diversity) are very important and indeed the civil service has led the way on subjects such as disability discrimination and on equality & diversity (and indeed on provision of legal training) long before barristers were required to obtain CPD hours. However, the civil service has its own requirements, which are highly relevant to the GLS and the wider civil service. I am not sure that compulsory courses are appropriate for government lawyers.

It seems to me that barristers need to attend courses (as now) relevant to their current or proposed area of activities.

The need to maintain own portfolio of evidence

This recommendation seems to be overly bureaucratic and will requires  barristers to maintain yet more information and records. However, if the current system of accreditation of CPD providers and courses provided by the BSB is replaced then clearly, barristers would need to maintain some sort of record.

Thank you for taking the time to read this.

Regards.

Stephen Swan

**From: Richard Wood**   
Sent: 06 September 2011 17:19  
To: Consultation  
Subject: Response to consultation on CPD

CONSULTATION QUESTIONS

Q1 Do you think that the fundamental approach to CPD requirements should continue to be based on a system defined by the number of hours of CPD undertaken annually?

Yes. If there was no set number of hours there would be no agreement about how much CPD was “enough,” and enforcement would be difficult. Very senior practitioners would treat it as a licence to do little or no CPD, contrary to the Working Group’s recommendation that CPD should apply to all.

Q2 Do you agree with the proposed new approach for CPD that will, as a single but five-fold strategy (1) increase the range of approved CPD activities; (2) increase the number of CPD hours per annum; (3) raise the standard of record-keeping; (4) simplify the system of reporting, and (5) simplify enforcement of the CPD Regulations?

No (see question 3).

Q3 Do you agree that with the more flexible definition of CPD (Report paragraph 117) the required number of hours should be increased from 12 to 24 hours per annum?

Absolutely not. As the report acknowledges, Irish and Scottish barristers currently do 10 hours of CPD per year, and we already do more hours than they do. I have not heard of any lack of public confidence in the Bars of Scotland or Northern Ireland as a result. 12 hours of CPD for barristers here should be enough to reassure the public of our skill, knowledge and professionalism.

Solicitors in this jurisdiction do 16 hours, and the Law Society has recently reviewed and approved of this figure, rejecting a proposal to increase it. My view is that 12 hours is sufficient, but if we really must do more than we do at present, it is difficult to see why we should do more CPD than the other legal profession does (especially as barristers generally appear in court more frequently than solicitors do). At least if our hours were increased to 16, it could be justified on the basis of attaining parity with solicitors; but there is no basis for 24 hours, which amounts to 240% of what our counterparts do in the other UK jurisdictions. There is certainly no need to exceed 16 hours.

Comparisons with the medical and dental professions are not relevant or helpful, as they are completely different professions which do completely different kinds of work and operate in completely different business models.

Q4 Do you think that (if more hours are required) acceptable activities should include private study, relevant professional and personal skills, and a wider range of training activities than is currently accepted?

Yes.

Q5 Do you agree that there should be no compulsory CPD topics for established practitioners, but a balance of activities must be undertaken?

Yes.

Q6 Do you consider that the current system of applying for extensions of time should be continued?

Yes. There should continue to be a power to reduce the £135 extension fee for those who can demonstrate financial hardship.

Q7 Do you agree that there should be no waivers of CPD requirements for barristers who wish to retain their practising certificates?

Yes, provided that the Qualifications Committee will have a discretion to allow a returning practitioner to make up “the whole of the shortfall, or some part of it,” i.e. less than the whole shortfall of CPD hours in an appropriate case (as suggested at the end of paragraph 130 of the report).

Q8 Has the system of accreditation of CPD providers and courses by the BSB outlived its usefulness, indicating that it should be replaced by the proposed system of barristers recording their own ‘verifiable’ and ‘nonverifiable’ activities?

Yes.

Q9 Would a new system based on a barrister’s Declaration on application for the renewal of the practising certificate, together with retention by the barrister of a Portfolio recording CPD activities (for monitoring and sampling purposes) be an effective means of ensuring CPD compliance?

Yes.

Q10 Should the New Practitioners’ Programme be retained substantially in its present form but based on an annual return as opposed to over a three year period?

Yes. This would discourage new practitioners from waiting until the eleventh hour and then having to cram all of their hours at the end, as often happens now.

Q11 Should the Forensic Accounting Course be retained substantially in its present form (but with some improvements to content and delivery)?

Yes.

Q12 Do you have any other comments on any of the recommendations or the proposed new system as detailed in Chapter XVI of the Report or in the draft Handbook?

No.

Richard Wood

9 King’s Bench Walk

**From: Christopher Makey**   
**Sent:** 06 September 2011 11:41  
**To:** Consultation  
**Cc:** Katherine Howells; Christopher Makey  
**Subject:** Increase of Hours re CPD

Clearly whoever is recommending an increase in hours to 24 per year either does not have a practice or alternatively has a considerable interest in lecturing.  It would appear that the CPD industry is now in full flow and it is time that the Bar council and Bar Standards Board, if they genuinely seek to represent the Bar should stand back and consider what actual benefit will accrue to members of the Bar by doubling up the number of hours required. I would like to think that I go to courses and seminars that may be of some benefit to me not because I have to. I would be interested to know the amount of costs that are currently generated by the industry that has grown up to ‘provide’ us with our CPD points. The one certainty is that by doubling the number of hours the costs will be far more than doubled.

I am wholly opposed to the doubling of hours but have no illusions that my views or others expressing similar views will be heeded.

Christopher D Makey

**RESPONSE OF THE SOUTH EASTERN CIRCUIT OF THE BAR**

**TO THE BAR STANDARDS BOARD REVIEW OF**

**CONTINUING PROFESSIONAL DEVELOPMENT**

An Historical Context:

1. The Bar Standards Board [BSB], as the „independent‟ regulatory arm of the Bar Council [BC] is responsible for overseeing and regulating complaints, discipline, ethics and standards and education and training.

2. Under the Courts and Legal Services Act 1990, prior to the establishment of the BSB, these areas were the province of the Bar Council and/or the Inns of Court. Many at the Bar consider that the BSB simply does that which the BC did previously, but at a considerable increase in the cost to the Bar. The continuing flurry of „consultations‟ and „proposals‟ requiring responses absorbs ever increasing tracts of time of many members of the Bar.

3. There is a growing sense of resentment amongst practitioners that the body created to oversee our essential standards appears to be more interested in form than substance. There has been no public outcry at deficiencies in the provision of legal services by the Bar and no Government assertions of any deficiencies. No evidence or research has been forthcoming to suggest that there is any sort of crisis in confidence in the competence or professionalism of members of the Bar.

4. Those practising in the publicly funded Bar are facing a continuing diminution in their remuneration for the provision of advisory and advocacy work, coupled with increasing workloads imposed by broadening demands of „case management‟ and written pleadings. There is already a marked reduction in pupillages being offered in these disciplines and significant numbers of senior practitioners are looking to move their practices away from publicly funded work. A „brain drain‟ is already underway. Those who regulate our profession should consider any „consultations‟ or „proposals‟ in the light of this backdrop.

The Current Position:

5. Section 4 of the Legal Services Act 2007 requires the Legal Services Board through its designated regulators to ensure continued education and training of the members so regulated.

6. In June 2011 the BSB set up a Working Group under the Chairmanship of Derek Wood QC to review the Continuing Professional Development [CPD] regime as part of a commitment to review all stages of the education and training of the Bar.

7. The current requirement for CPD is 12 hours per annum, of which 4 hours must be on accredited courses. The BSB proposal is that the number of required hours should be doubled to 24.

Response of the South Eastern Circuit of the Bar to the BSB review of CPD 2

8. At **para 19** of the Overview to the Review, the BSB states that the proposed amendments „*will meet the regulatory objectives set out in the Legal Services Act 2007 in terms of ensuring the protection and promotion of the public interests of the individual consumers of the services delivered*‟. However there is no suggestion either therein, or in the Review itself, that the present provisions of CPD do not already meet those objectives or the public interest. We are unaware of any debate within the public arena, or any evidence based research to support the proposition that there is a requirement for any increase in the required CPD hours.

9. The Review is based on a fallacy: the sole basis for the proposed 100% increase in the numbers of CPD hours appears to be as a counterbalance to the proposal to expand the areas of activity that can be considered for the completion of the CPD hours. This has nothing to do with the objectives of the regime.

10. We acknowledge that there is good reason to reduce the administrative cost to the BSB (and thus to the Bar) of checking the returns of the individual members and thus simplifying the reporting system that the required hours have been completed. We support anything that may assist in this objective.

Criticisms of the current requirement?

11. The Working Group refers to these at **paras 83-86**. One of these is said to be that the 12 hour requirement is „*too small*‟ (drawing comparisons with other professions), and is merely formal. The Working Group comments that the comparison with other professions may not take into account the much wider range of activities that count for CPD.

12. At **Annex 6** the Working Group set out a list of the CPD requirements of other professions. It should be noted that the requirements of the Bar Council of Ireland and the Faculty of Advocates is 10 hours, whilst ICAEW and the GMC has no specific numbers of hours. Added to this list might be:

a. Health Professional Council (UK regulator for 15 health professional bodies) does not link CPD to fitness to practice and has no set number of hours;

b. Chartered Scientists have no set hours;

c. ICAEW, which is listed in Annex 6, requires members to complete such development activity „*as the person feels sufficient to remain competent’*, and submit a signed declaration to that effect;

d. The General Pharmaceutical Council (regulator for Pharmacists and Pharmacy Technicians) requires members to complete 9 hours per year, 3 of which should be certified.

13. At **para 86**, one of the criticisms is that those practising out of London are at a particular disadvantage.

Particular Responses of Members of the South Eastern Circuit:

14. When this Committee was formed to consider the appropriate response to the consultation, we invited members of the Circuit to send us their views by email. We have received many responses from practitioners, none of which is in favour of any extension to the number of CPD hours.

Response of the South Eastern Circuit of the Bar to the BSB review of CPD 3

15. There are many trenchant criticisms of the existing system and a demand that those tasked with the regulation of the Bar should return to common sense and a proper understanding of the amount of “out of hours work” that is already done by the Bar. Examples of the criticisms are set out below:

a. In order to appear in court or to advise clients, we have to be in touch with current and proposed developments in law and practice. Consequently, we carry out research with great regularity, particularly now with the advantages of online databases. CPD cannot keep anyone up to date by attending courses or by the keeping of logs of private reading. The necessary hours may have been completed by the end of, for example, March but the law on a topic may change or a new statute be passed in April; in such circumstances, the keeping of a record for a couple of months hardly meets the professed aims of CPD;

b. Single parents can suffer from the hours already necessary and the difficulties are compounded if such persons live out of a metropolis;

c. Preparation for lectures and seminars, plus in many instances travelling some distance to attend activities, can more than treble the time taken to acquire the required number of hours;

d. Attending judicial courses often takes 4–15 hours of preparation, none of which is taken into account in the CPD allocated to the actual course;

e. The Working Group failed to take into account that members of many of the other professions considered are paid to attend CPD activities. Barristers are not paid, save those attending judicial seminars, albeit at a half rate;

f. At a time when pressure on the Publicly Funded Bar is becoming more acute, and fees are being cut by successive Governments, the additional cost of attending further CPD courses is punitive on the self-employed. Many CPD courses require those attending to spend a day doing so: any increase will require practitioners to find further time to accommodate attendance and pay disbursements in order to attend, while at the same time losing the opportunity for earning and/or paying for childcare;

g. There is a real sense that only those providing CPD courses stand to benefit from an increase in CPD requirement. The CPD regime has already spawned an industry of CPD providers, with no apparent improvement in the quality of legal provision in the country;

h. Presumably the intended effect of undertaking CPD courses is to increase knowledge of law and procedure and to enhance professional skills. Is it suggested that such increase and enhancement have become necessary amongst barristers generally? Is it suggested that the judges are complaining that barristers as a class are becoming more ignorant of the law than they used to be; or that advocacy skills or other professional skills are in decline? Are solicitors (or other professionals) who instruct barristers making such complaints? Do complaints about barristers from lay clients increasingly cite lack of knowledge and skill as grounds of dissatisfaction? (if they do, how often are these grounds made out on investigation?). In the absence of some demonstrable causes for dissatisfaction with the performance of barristers as a class, there is inevitably a suspicion that this proposal amounts to regulation for regulation‟s sake;

Response of the South Eastern Circuit of the Bar to the BSB review of CPD 4

i. The proposal will add to the burden of bureaucracy and cost which the Bar as a whole and barristers as individuals have to contend with, as well as Treasurers and members of the Management Committees of Chambers. A few examples of the present regulatory burden are as follows: practitioners at the Publicly Funded Bar are now compelled to gather and prepare increasing numbers of documents for Graduated Fee Payments and for submissions to contract managers in respect of VHCC cases; all practitioners have a growing demand for paperwork as case management becomes increasingly paper driven; Barmark accredited Chambers undertake regular consultation about and formulation of policies, followed by policy audits/reviews and reformulations, the whole set of arrangements being subject to annual audit; regulations require policies to govern complaints by clients, work distribution amongst tenants and pupils, money laundering checks, the acceptance of work on a direct access basis and the reporting of CPD compliance. In all Chambers the compliance burden on practicing members has grown and continues to grow at an unacceptable rate;

j. One Member wrote thus: „*Standards are maintained by a strong sense of professional identity and esprit de corps. I personally do not think that the original imposition of a CPD requirement was justified. Long before it was imposed [my] experience of attending lectures, conferences and training events put on by the Bar Council, the Inns and the professional associations (ALBA for example) was that practitioners voluntarily attended in large numbers and participated enthusiastically. Perhaps that was because as persons who had chosen a career in the law they were interested in the topics under discussion and believed they would benefit from attending’*;

k. The Bar will only survive (and will only deserve to survive) if it can continue to attract individuals who are interested in the law and in the practice of law and who will continue to advance their legal educations accordingly. If, as is proposed, it is really necessary to impose a system which requires practitioners to report details of their private legal reading to the authorities (presumably to ensure they are reading enough) then we can only conclude that the profession is not attracting entrants of the required calibre. We do not believe this is the case: our experience is that the quality of entrants to the profession is very high. A profession which has always put a high value on self-reliance and independence is *not* well served by the increasing trend towards minute regulatory supervision. Simply increasing CPD requirements will therefore have no effect on quality. It may also have an undesirable side effect, namely to cause otherwise entirely honest and responsible individuals to undertake „creative accounting‟ in order to provide the necessary documentation to demonstrate compliance with a further increase in regulation;

l. One member stated that the solution is to increase the effectiveness of the system of supervision and discipline of the Bar. He was a member of the BSB (and formerly the PCC) prosecution panel for about seven years: in that time he saw virtually no cases in which demonstrably inadequate, dishonest or disreputable barristers were the subject of the proceedings. Instead, there was a never ending tide of prosecutions for failure to comply with CPD regulations brought against individuals, most of whom were non-compliant due to a combination of personal problems and not because they had ever provided an inadequate service to their clients. Such easy targeting is not what is required of a proper supervising body and adds to the mistrust of practitioners that there is an emphasis on form over substance;

Response of the South Eastern Circuit of the Bar to the BSB review of CPD 5

m. Whenever a new or increased regulatory burden is proposed it is necessary to ask “*to what problem is this proposal said to be a solution?*” Neither the Working Group nor the BSB has given any detailed reasons why it is necessary or desirable to double the CPD requirement.

16. The majority of proceedings before the BSB in respect of CPD breaches appear to be against sole practitioners. There appears to be a case for the provision of better circulation of accredited events. There may also be a case for them to be subjected to closer regulation than those within a Chambers framework.

The Working Group‟s reasons for proposing an increase in CPD hours:

17. Part of the answer is found at **Chapter XI paras 118-119:** “*We do not think that 12 hours are now enough’*. There is no material presented to found this view. Moreover the Group then states „*and we suspect that the public will not think that 12 hours are enough*‟. This type of reasoning is unhelpful to those tasked with responding to it.

18. It appears to us that, in reality, the sole ground put forward by the Working Group for an increase in the number of hours would appear to be that if the areas of activity are to be increased then correspondingly so should the number of hours.

19. We would agree that the areas of activity should be increased to include those set out at **Table 6** and that those at **Table 7** should be excluded. However those areas in Table 6 can be the subjects of self-certification, but such extension of activities does not justify an increase in the number of hours to be completed; rather it extends the content of what may be completed in the 8 hours of unaccredited activity.

20. Reasons for opposing the increase in CPD hours are as follows:

a. Taking into account the above and in particular the Working Group‟s Review, we have looked for the specific evidence whether empirical, statistical or otherwise that founds any suggestion that the current CPD requirement fails to meet the objectives, whether set by statute or the aims of continuing education? We have found none;

b. The Working Group has failed to present any evidence to support either its own thoughts or its suspicions about what the public might think. We conclude that its recommendations have no substance and cannot be relied on as a sensible, reasonable or proportionate basis for its conclusions;

c. No evidence from the public is presented. We suggest that if the public were made aware of a number of matters then any concerns would be allayed with ease. Amongst such matters are the following:

i. The hours now required for both new entrants and established practitioners;

ii. The usual amount of reading and research that is carried out by members, both to keep up to date generally and to prepare particular cases;

iii. The CPD hours of the faculty of Law, the Irish Bar and the other professions that have no specific number of hours;

iv. Many do more hours voluntarily in various areas; indeed those who attend judicial seminars already do significantly more;

Response of the South Eastern Circuit of the Bar to the BSB review of CPD 6

d. The number of hours for solicitors is no justification for an increase in those of the Bar – we are not (yet) a unified profession and complaints against Solicitors are many more numerous than those against the Bar.

21. We acknowledge that the current climate has engendered a shift to the professions having a requirement of CPD, now enforced by statute. This has substantially overlooked the fact that the Bar has seldom been criticised for not keeping up to date and the public does not lack confidence in the profession: quite the contrary - for more decades than most of us have been practising, the Bar has been recognised as one of the best examples of the legal profession in the world. The absence of any contradictory evidence and the conclusion that a failure to comply with CPD requirements does not equate with unfitness to practise contradicts the Working Groups basis for its recommendation that the CPD hours should be doubled to 24.

22. At **para 8** of the Conclusions, the Working Group states that there is good evidence at the Bar that CPD is effective in promoting the purposes that CPD is intended to promote. In other words, compliance with the CPD 12 hours achieves the objects. In these circumstances we fail to understand the need to propose an increase of any size, let alone one of 100%.

The additional areas of activity:

23. **Table 6 para 112** contains the proposed additional qualifying areas of CPD activity. We agree that there is good reason to expand the qualifying areas, however there is no reason why these should not form part of the unaccredited hours under the present regime.

24. Interestingly, the last item in Table 6 is „Private Study‟; namely „*reading by way of private study, law reports, statutes, legal journals or similar materials otherwise than for the purpose of publication or providing legal services to a particular client, viewing or listening to relevant broadcasts having a professional legal content’*. This is an area that the members of the profession have to do, whether on a daily or weekly basis in order to keep up to date with the law. The Working Group recognised this at **para 96**. So, whilst acknowledging that in order to remain up to date we have to undertake very significant hours of legal research, there is a proposal that the number of formal CPD hours should be doubled. We fail to understand this.

25. The Working Group set out the aims and purpose of CPD at **para 71**. In general we do not disagree. However we do not accept that attending CPD events creates a „*collegiate ethos’*. The true ethos of the Bar is created and continued through Chambers and in Court Robing rooms, where the sharing of views on cases and laws contributes to the advancement of knowledge and an understanding of our respective positions within the current and historical legal heirarchy.

Should CPD compliance be a requirement for the granting of a Practising Certificate?

26. The Working Group accepts (at **para 151**) that failure to comply with the CPD requirements, whether in whole or in part, does not mean that one is unfit to practise. Consequently, compliance should not be a condition for a Practising Certificate. Any proposal to combine CPD compliance with the granting of a Practising Certificate has no proper foundation.

Response of the South Eastern Circuit of the Bar to the BSB review of CPD 7

Monitoring and enforcement:

27. It is agreed that the current regime for monitoring is burdensome and costly. We note that in other professions the preferred method is for the member to keep the required records and submit a declaration of compliance (but not as a pre-condition of obtaining a Practising Certificate), coupled with random monitoring.

28. The cost to the Bar of the BSB and BC is such that any method of reducing costs is to be encouraged.

29. We support the idea of a declaration of compliance with the 12 hour CPD requirement coupled with a percentage of random checks to be carried out by the BSB.

a. As no one would know if they were to be part of the random sample, it should encourage the keeping of proper records. In respect of accredited activities, a comparison of the member‟s log with the activity providers signed logs would verify that part in any event;

b. Whilst there would be some burden on members in log keeping, we do not consider that this would be overly burdensome. We are opposed to a system that requires the setting out of annual aims, achievements and effect;

c. We do not accept the recommendation at **R16**, **page 90**, or as set out in the **Draft Handbook** at **para 1.3 page 120-121**: the burden of assessing, planning, implementation and review, in the form of a reflective plan is unnecessary and cumbersome;

d. The recommendation at **para 149, page 73**, is not acceptable:

i. The responsibility for the regulation and enforcement of the CPD requirement is that of the BSB, not of any individual practitioner;

ii. If there is a need for a member‟s record to be considered after the Compliance Section, then it should be delegated to a practising Member of the BSB and not to Heads of Chambers, QCs, Benchers, Leaders of the Circuit etc. These people have enough to do by virtue of their individual positions without such added burden.

Responses to the remaining “Conclusions and Recommendations”:

30. As to the “Conclusions and Recommendations” [R], other than those mentioned above, we respond as follows:

i. We agree R1, save for the recommendation in the increase in the number of hours, which is not supported by any evidence of need or criticism;

ii. We agree R2-5;

iii. We agree that there should be no compulsory topics, R6;

iv. Whilst barristers should be so trusted, we do not agree with any increase in the number of hours; there is no material in the Review that justifies R7;

Response of the South Eastern Circuit of the Bar to the BSB review of CPD 8

v. We agree Recommendations R8-10;

vi. As to R11 (waivers): the current system should be retained. The Recommendation is unfair to those who are ill, pregnant or otherwise unable to carry on practice for some time whether, voluntarily or not;

vii. We agree R12;

viii. We agree R 13 and 15: we prefer the use of verification by a member‟s documentary proof of having undertaken 12 hours CPD, of which 4 should be activities verified by the external provider of the CPD activity;

ix. We make no comment on R14, this is a matter for the BC and BSB;

x. We completely disagree with members having to produce an expanded and reflective form of record as set out in R16 and the Draft Handbook; as one example of why such is otiose, a member may go to a lecture on the Bribery Act but in fact not have one case that year on it: how is he/she to demonstrate implementation, review-appraisal and revision?

xi. R17 is part of Table 6, which we agree;

xii. We agree R18, save that the signed declaration should not be part of the requirement for a Practising Certificate;

xiii. We agree R19, except that a senior member of the profession outside the BSB should be involved in the procedures;

xiv. In the circumstances above, we do not accept R20, which again ties compliance to the issue of a Practising Certificate, especially as the Working Group accept that non-compliance does not equate to unfitness to practise;

xv. As to R21, the current rules should remain;

xvi. We agree R22-23;

xvii. We see no benefit to be gained by any extension to the ethics programme or the need for the attendance of solicitors and non-lawyers – we therefore disagree with R24;

xviii. R25: since we see no basis for any extension of the number of CPD hours, this recommendation is not accepted;

xix. We agree R26;

xx. We agree with R27: CPD should not be part of the QAA;

xxi. We agree R28.

Response of the South Eastern Circuit of the Bar to the BSB review of CPD 9

Answers to the particular consultation questions:

31. In the light of the above, our answers to the Consultation questions are as follows:

Q1 Agreed.

Q2 We agree the range of approved activities should be increased.

We do not agree that the CPD hours should be or need to be increased at all;

The current method of record keeping of verified (accredited) activities is fit for purpose; as to non-verified activities, a simple log of the date, time spent and the precise nature of the subject matter of the activity is sufficient; we do not agree with the proposal of some form of „reflective‟ record;

We agree with enforcement, as we have set out above, namely a certificate of compliance, not related to the application for a Practising Certificate, coupled with random sampling of a percentage of the Bar and Chambers Monitoring – all to be within the province of the BSB.

Q3 Save for the reference to a collegiate ethos, we agree.

Q4 Agreed.

Q5 Agreed.

Q6 Agreed. We also consider that there is a good case for permitting carry forward/carry back provisions for those who complete significant numbers of hours in a given CPD period but „fall short‟ in the immediately preceding or subsequent period.

Q7 Not agreed; the current system should be retained.

Q8 Agreed.

Q9 Partially agreed; a signed declaration of CPD compliance together with the keeping of a Portfolio and the undertaking of random checks is an appropriate method of ensuring CPD compliance. However, this should not be part of the application for a Practising Certificate; there is no suggestion in the Review by the Working Group that non-compliance equates with being unfit to practise – quite the contrary.

Q10 Agreed.

Q11 Agreed.

Q12 See the above Response. In consequence, we submit that much of the Draft Handbook is unnecessary.

**KARIM S. KHALIL QC**

**NICHOLAS VALIOS QC**

**WILLIAM HUGHES**

**25/09/2011**

CPD Consultation

Bar Standards Board

289-293 High Holborn

London WC1V 7HZ

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

30 September 2011

Dear Sir / Madam

**Consultation Paper on the proposed new system for CPD**

Thank you for the opportunity to comment on proposals in relation to a new system for Continuing Professional Development (CPD). This response is focussed on the proposals where the Crown Prosecution Service (CPS) has a direct interest.

We attach a list of answers in relation to the specific questions in the consultation.

The CPS has significant concerns about the proposal to increase the number of CPD hours and we wish to highlight the following points.

This proposal comes at a very difficult time when government organisations are under significant resource pressure.

Although it is, and will remain, an individual barrister’s professional responsibility to comply with CPD, the CPS has always taken the stance that it will do its best to provide sufficient opportunities for its staff to achieve all their CPD, resulting in an expectation that staff will not need to fund or undertake external training.

This places an onus on the CPS to provide sufficient suitable and new verifiable training each year, which is costly and resource intensive - both in terms of initial set-up and ongoing maintenance. It represents at least a doubling of the publicly-funded resource that has to be applied to ensure compliance.

Furthermore, extraction time should not be overlooked. The CPS will need to consider whether it continues to expect / permit all CPD to be obtained during work hours, in particular in relation to non-verified activity.

It may prove difficult for CPS barristers to achieve the required CPD, particularly the 12 hours of verifiable activity each year, without unjustifiable repetition from previous years. The need for proof of the activity aligns it closely with the type of training which is currently accredited – but of which only 4 hours is needed at present.

CPS formal response:

**Q1 Do you think that the fundamental approach to CPD requirements should continue to be based on a system defined by the number of hours of CPD undertaken annually?**

Yes. The Crown Prosecution service (CPS) view is that this provides a straightforward approach which is easy for barristers and the BSB to apply and regulate.

**Q2 Do you agree with the proposed new approach for CPD that will, as a single but five-fold strategy (1) increase the range of approved CPD activities; (2) increase the number of CPD hours per annum; (3) raise the standard of record-keeping; (4) simplify the system of reporting, and (5) simplify enforcement of the CPD Regulations?**

No. Whilst the CPS agrees with the suggestions at (1), (3) and (4), it disagrees with those at (2) and (5). In particular, the CPS strongly disagrees with (2). Furthermore, the CPS does not agree that all five elements of the strategy must necessarily be interdependent; some elements could be introduced without the whole.

**Q3 Do you agree that with the more flexible definition of CPD (Report paragraph 117) the required number of hours should be increased from 12 to 24 hours per annum?**

No. The CPS does not agree that the revised definition of CPD means that 12 hours per annum is insufficient to develop and maintain high standards of professional practice.

The proposed requirement of 24 hours per annum will be difficult to achieve in terms of work-life balance, particularly for employed barristers who by definition have little freedom of choice regarding their daily hours and workload / practice.

It also represents a doubling of the publicly-funded resources that have to be applied in order to facilitate compliance by employed barristers. This comes at a time when government organisations are under significant resource pressure. The implications of extraction from normal duties cannot be overlooked.

The increased CPD requirement may lead to an increased level of non-compliance and a concomitant increase in the cost and administrative burden to individuals or their employer of complying with CPD.

**Q4 Do you think that (if more hours are required) acceptable activities should include private study, relevant professional and personal skills, and a wider range of training activities than is currently accepted?**

The CPS welcomes the proposal to widen the range of acceptable activities. It considers that, irrespective of whether more hours are required, this should occur in order to better reflect the range of skills and knowledge required for barristers of all types of practice – in particular to permit relevant professional and interpersonal personal skills and not just black-letter law.

The CPS would suggest that references to “particular clients” (e.g. in the context of private study) should be widened to “particular clients or cases” in order to be more inclusionary and reflect the nature of practice for employed barristers who do not necessarily have clients.

However non-verifiable CPD (i.e. private study) could be open to abuse and if it is without a limit it may not be seen as meaningful.

**Q5 Do you agree that there should be no compulsory CPD topics for established practitioners, but a balance of activities must be undertaken?**

No. Barristers’ areas of practice range so widely that compulsory activities run the risk of irrelevance to many, thus diverting their time and energy from activities which would be of greater relevance and impact.

However, to support the proposed equality and diversity code of conduct and practising rules, the CPS suggests that consideration is given to compulsory equality and diversity training as standalone or integrated into the NPP.

**Q6 Do you consider that the current system of applying for extensions of time should be continued?**

Yes, in relation to barristers who have failed to complete the requirement whilst holding a practising certificate. However, the consultation documents are unclear / inconsistent as to whether an application for extension of time can only be made in anticipation of failure to comply, or can also be made after the end of the CPD year; this requires clarification.

Consideration should be given to the level and appropriateness of fines particularly when an extension is related to parental leave or disability.

In relation to barristers who have suspended their practising certificate, please see the CPS’ response to Q12.

**Q7 Do you agree that there should be no waivers of CPD requirements for barristers who wish to retain their practising certificates?**

On the specific question posed, the CPS broadly agrees that barristers who choose to retain their practising certificates should remain subject to the CPD requirements.

The CPS does not agree with the linked proposal relating to barristers who choose to suspend their practising certificate during a period of absence. This is explored further in its response to Q12 at point (2).

**Q8 Has the system of accreditation of CPD providers and courses by the BSB outlived its usefulness, indicating that it should be replaced by the proposed system of barristers recording their own ‘verifiable’ and ‘non-verifiable’ activities?**

The CPS does not perceive the current system to have outlived its usefulness. Accreditation of courses in-house provides an assurance of quality, e.g. specific training outcomes, comprehensive and properly designed contents, and good training practice. The system for recording and verifying attendance is straightforward.

The proposed system creates an additional onus on individual barristers and course organisers to ensure that proof of verification is available. The lack of clarity regarding what the BSB would accept as acceptable proof is unhelpful; any requirement to provide further proof many months after the event may be difficult to achieve without a disproportionate amount of time and effort.

For organisations such as the CPS, accreditation of activity will have to be retained in any event owing to the CPD requirements set out by the Solicitors Regulation Authority.

**Q9 Would a new system based on a barrister’s *Declaration* on application for the renewal of the practising certificate, together with retention by the barrister of a *Portfolio* recording CPD activities (for monitoring and sampling purposes) be an effective means of ensuring CPD compliance?**

The CPS considers that the new system will not be significantly more effective as a means of ensuring CPD compliance.

The declaration will be straightforward for a barrister to complete and for the BSB to check online.

The portfolio potentially requires barristers to retain a significant amount of paper evidence when increased emphasis is on paperless working. The risks of proof of verification going astray must not be underestimated. Similarly, where a barrister is deemed not to have completed the portfolio with adequate detail or reflective thought, it may be very difficult after many months or even years to provide further information – with the attendant risk to the barrister’s professional practice and standing.

The in-depth audit of sampled records and portfolios appears to involve a considerably greater amount of work for the BSB and subsequently for the barrister.

On a practical note, the requirement for the personal declaration by the barrister means that bulk renewal of the practising certificate by a barrister’s employer may no longer be possible. If this is the case, it will create additional complexities in the renewal system.

**Q10 Should the New Practitioners’ Programme be retained substantially in its present form but based on an annual return as opposed to over a three year period?**

Yes. This introduces parity with the EPP whilst retaining the specific development activities for new barristers. There is also an opportunity to include equality and diversity if not already done.

**Q11 Should the Forensic Accounting Course be retained substantially in its present form (but with some improvements to content and delivery)?**

The CPS has no particular view on this question.

**Q12 Do you have any other comments on any of the recommendations or the proposed new system as detailed in Chapter XVI of the Report or in the draft Handbook?**

Widening the accessibility of CPD is welcomed particularly for disabled, part time and returning practitioners’ e.g. online courses, distance learning and recognising other types of activities.

Rules for extensions should be more explicit in the handbook rather than just a statement that an application can be made. In particular outlining how extensions can be a reasonable adjustment for disabled people who manage long term illness or for those taking parental leave.

The final publication of the handbook should ideally reflect the revised Equality & Diversity Code for the Bar due this year which will in turn reflect obligations under the Equality Act 2010.

In addition to the clarification sought in its responses to questions 6 & 12(2), the CPS considers that clarification is required on the following points:

* Whether refreshments and other breaks should continue to be deducted when calculating time for a CPD activity
* Whether there should be a minimum duration for CPD activity as at present
* What the position will be of a barrister whose practising certificate is not renewed, where that decision is taken after 1 April.
  + In view of the fact that the declaration of compliance need not be submitted until 31 March and the certificate runs from 1 April, the BSB is unlikely to be able to make a decision regarding sanctions for non-compliance before the start of the next practising certificate year.
  + It is reasonable to expect the barrister to continue to practise pending the BSB’s decision.
  + In the event of non-renewal of the certificate, it is not clear whether that would be backdated to the start of April, thus putting the barrister at retrospective risk of professional misconduct for conducting reserved work without a certificate, or even criminal prosecution.

In relation to the proposal relating to barristers who suspend their practising certificate and thus their CPD requirement during a period of absence from practice: given that the CPD requirement does not apply while the certificate is suspended, we strongly disagree that those hours should have to be subsequently ‘made up’.

The proposal has the effect of merely suspending or delaying the CPD requirement. This is illogical in view of the Regulations’ stipulation that CPD does not apply during that time. It is not in accordance with either the letter or spirit of the Regulations.

The impact of the proposal on women will be considerable and the CPS questions whether this has been fully appreciated by the BSB.

The proposal also forces barristers to pay the application fee for extension of time when they have not in fact failed to comply with the CPD regulations. This will have a disproportionate effect on those with lower incomes e.g. women returning to practice part-time after a period of maternity leave.

There is considerable uncertainty (either inherent in the proposals or owing to inconsistencies between the report, draft handbook, FAQs in the draft handbook, and the summary document) regarding the position of barristers who suspend their practising certificate during absence and then return to practice. Clarification is required relating to:

a) whether there is an automatic fine for non-completion of CPD upon return to work;

b) when the application for the extension must be made;

c) whether the barrister must make up all of the hours from their period of absence, or only some (or none);

d) whether the barrister must make up any required hours before or after return to work; and

e) the likely period of time permitted for making up such hours.

This uncertainty risks creating a situation where a barrister in the CPS cannot gain their CPD without returning to practice, but cannot return to practice without first gaining their CPD. In that situation, the continued employability of the barrister is potentially jeopardised

The CPS recognises that refusal to renew the practising certificate of a barrister for non-compliance with CPD is stated to be a last resort of the BSB.

However, the CPS considers that this ability to prevent a barrister from practising, without recourse to a fully independent tribunal, is disproportionate.

Yours faithfully

Keith Milburn

Operations Directorate

Crown Prosecution Service

28th September 2011

Dear Sir

**Review of Continuing Professional Development**

I would like to submit the following comments to the Working Party in regard to paragraphs 126 and 127, and recommendations R2, R7, and R13.

**Paragraphs 126 and 127**

If I may comment on the Working Party’s view that barristers should not be able to carry-forward, or carry-back CPD points.

I would suggest that the ability to carry over CPD points would be helpful. The law does not alter in steady and consistent manner. In areas of law there are periods of enormous change followed by periods of relative quiet. In the periods of change it can be easy to reach the CPD target, and it can be beneficial and important in sharpening one’s skills to exceed the target. However in the next year in terms of relevant law comparatively little occurs and there are few new courses or articles relevant to one’s area of practice. It would seem inappropriate to attend courses purely to meet a target.

Additionally I would suggest that if a barrister has exceeded the target for CPD points in one year his or her skill will not decline in a year due to the failure to attend irrelevant courses.

My suggestion would make it difficult to link the issuing of the practising certificate to the requirement to obtain in a year a specific amount of CPD points. I would suggest that although this linkage for certain purposes may be desirable (as the Working Party itself states) it is not essential. In the section dealing with monitoring and enforcement of the CPD system the Working Party itself formed the view that the failure to meet the CPD target does not mean that a practitioner is not fit to hold a practising certificate. Therefore I would suggest that the ability to carry-forward CPD points is a helpful position.

**Recommendations R2, and R13**

I support the recommendation of the widening of the activities that count towards the CPD target. I would like to focus on the attendance at courses.

In my view the current position of requiring accredited points works adversely against members of the Employed Bar. It does so in the following manner that happened to me.

I am an employed barrister; last year I attended two courses with a colleague from work who is a solicitor. In our employment we had exactly the same duties and we often worked interchangeably. However because the courses were accredited by the Law Society and not by the Bar Standards Board, my colleague was able to claim CPD points and I could not. In terms of the purpose of CPD points this seems arbitrary and indefensible, firstly because the providers were in one case a national firm of solicitors, and the second a respectable accountancy institute.

Secondly as the Working Party commented at paragraph 134 of the report, it is impossible under the current system to exercise any effective quality control of providers. I would suggest this applies also to the courses.

Therefore the concept of accredited courses as currently administered by the Bar Standards Board fails to act equitably in the case of the Employed Bar; and I would support the recommendation of allowing practitioners themselves to choose the appropriate method of obtaining CPD points.

If accreditation is to remain then consideration should be given to cross accreditation between the Bar and the Law Society.

**Recommendation R7**

I would like to suggest further consideration of this recommendation and the manner that it could affect some members of the Employed Bar.

A number of employers have adopted the requirement that their lawyers meet a target number of billable hours a year. A number of these organisations do not provide an allowance for obtaining CPD points in relation to the target.

It is my experience that to meet a target substantial additional non-billable time has to be spent working; for example, in a day it could take up to 7 non billable hours to reach 5 billable hours. Therefore the increase of the CPD requirement from 12 hours to 24 hours could create a problem.

Although in abstract the suggested increase is only an additional hour a month, the failure to meet the annual billable hours target by 12 hours is likely to have adverse effects at the employee’s annual review.

Therefore I would suggest that the CPD target should not be increased. However if it is to be increased then the CPD points required should be comparable to the Law Society’s requirement and set at 16 hours.

Yours Faithfully

AO Austen-Peters

**FDA Response to Review of Continuing Professional**

**Development**

On behalf of the FDA Crown Prosecution Service Section

prepared by the Professional Issues Sub-Committee

September 2011FDA CPS Professional Issues Sub-Committee Page2

About the FDA

The FDA is the union representing professionals and senior managers in the civil service. One of its constituent groups (or sections) is the Crown Prosecution Service Section which represents Barristers, Solicitors and Senior Managers within the Crown Prosecution Service.

In responding to this consultation the FDA is representing its Barrister members’ interests.

Whilst the Crown Prosecution Service has extensive dealings with Barristers in self-employed practise such barristers cannot be members of the FDA and thus in producing this response the FDA does not seek to represent these them.

This response is independent of any formal response that the Crown Prosecution Service may make.

Andrew P. Morgan

Deputy National Convenor FDA CPS Section,

Chair, FDA CPS Section Professional Issues Sub-Committee FDA CPS Professional Issues Sub-Committee Page3

**CONSULTATION QUESTIONS AND RESPONSES**

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

Q1 Do you think that the fundamental approach to CPD requirements should continue to be based on a system defined by the number of hours of CPD undertaken annually?

Yes. The FDA recognises that the system of required yearly CPD hours is embedded in practice and widely understood by all practitioners. The only caveat would be where CPD hours are gained in the last 3 months of a year where the CPD requirement has already been met. In such circumstances a provision of proportional carry-over should be allowed for ½ or ⅓ of the hours to be carried forward to the next CPD year.

Q2 Do you agree with the proposed new approach for CPD that will, as a single but five-fold strategy (1) increase the range of approved CPD activities; (2) increase the number of CPD hours per annum; (3) raise the standard of record-keeping; (4) simplify the system of reporting, and (5) simplify enforcement of the CPD Regulations?

Partially. Whilst the FDA agrees with the aspirations behind the recommendations for the new approach, some of the additional documentation will increase the administrative burden on the members of the FDA. As hard pressed civil servants the proposals for the new portfolio seem unnecessarily detailed and the old form was a simpler way of recording and retaining the CPD hours undertaken.

Q3 Do you agree that with the more flexible definition of CPD (Report paragraph 117) the required number of hours should be increased from 12 to 24 hours per annum?

Yes. The FDA feels that the increase is mitigated by the increased range of activities and the removal of the accreditation process that was frequently overlooked by those arranging training for FDA members. The new system will allow a far wider range of activities to be included with much of the content provided to FDA members now becoming verifiable CPD hours rather than the unaccredited hours under the previous scheme. FDA CPS Professional Issues Sub-Committee Page4

Q4 Do you think that (if more hours are required) acceptable activities should include private study, relevant professional and personal skills, and a wider range of training activities than is currently accepted?

Yes. The relaxation of the CPD system and the removal of the accredited and non-accredited hours provide far greater freedom to undertake professional development without the strictures of formal training and courses. Members have commented that they had in the past attended CPD accredited courses with only passing relevance to their practice areas to gain the required hours of CPD. The inclusion of a wider range of activities means that this should no longer be the case.

Q5 Do you agree that there should be no compulsory CPD topics for established practitioners, but a balance of activities must be undertaken?

Yes. It must be left to experienced practitioners to select CPD events and topics relevant to their area of practice. The requirements of the New Practitioners Program should however be maintained.

Q6 Do you consider that the current system of applying for extensions of time should be continued?

Yes.

Q7 Do you agree that there should be no waivers of CPD requirements for barristers who wish to retain their practising certificates?

Yes. The system of extensions adequately meets the requirements for those who are unable to complete the CPD requirement within the twelve month period.

Q8 Has the system of accreditation of CPD providers and courses by the BSB outlived its usefulness, indicating that it should be replaced by the proposed system of barristers recording their own ‘verifiable’ and ‘non- verifiable’ activities?

Yes. The system of accreditation was too difficult to engage with for many small course providers and for FDA members. Thus many courses which now will be “verifiable” would not have received accreditation in time for the delivery of the training or course. This new proposal recognises and records a wider range of activities and will benefit members. FDA CPS Professional Issues Sub-Committee Page5

Q9 Would a new system based on a barrister’s ***Declaration*** on application for the renewal of the practising certificate, together with retention by the barrister of a ***Portfolio*** recording CPD activities (for monitoring and sampling purposes) be an effective means of ensuring CPD compliance?

Partially. As with all compliance systems those who properly undertook the CPD hours required of them and submitted their record cards will continue to do so. Those who failed in both respects are unlikely to be suddenly driven to undertake the required action. The system of itself will not ensure compliance and there are concerns about the lack of a positive requirement to provide the endorsed and signed CPD record card.

As a significant proportion of the profession FDA members have concerns about the spot check nature of the compliance system and the possibility of audit. It would be preferable for those failing to comply with the reporting requirement as it presently exists to be the subject of further scrutiny.

Q10 Should the New Practitioners’ Programme be retained substantially in its present form but based on an annual return as opposed to over a three year period?

Yes. The requirements of the New Practitioners Program should be maintained subject to the amendments proposed.

Q11 Should the Forensic Accounting Course be retained substantially in its present form (but with some improvements to content and delivery)?

Yes. The requirements of the Forensic Accounting Course should be maintained subject to the amendments proposed.

Q12 Do you have any other comments on any of the recommendations or the proposed new system as detailed in Chapter XVI of the Report or in the draft Handbook?

No. The FDA are content with the Chapter XVI, but would suggest some layout and style changes to the handbook which would make it more accessible.

**CPD Questionnaire 2011**

Q1 Do you think that the fundamental approach to CPD requirements should continue to be based on a system defined by the number of hours of CPD undertaken annually?

***The current hourly system is workable, but would not be if it were extended***

Q2 Do you agree with the proposed new approach for CPD that will, as a single but five-fold strategy (1) increase the range of approved CPD activities; (2) increase the number of CPD hours per annum; (3) raise the standard of record-keeping; (4) simplify the system of reporting, and (5) simplify enforcement of the CPD Regulations?

***No, I see no need for (1), (2), or (3), but (4) and (5) make sense.***

Q3 Do you agree that with the more flexible definition of CPD (Report paragraph 117) the required number of hours should be increased from 12 to 24 hours per annum?

***No, very definitely not.***

Q4 Do you think that (if more hours are required) acceptable activities should include private study, relevant professional and personal skills, and a wider range of training activities than is currently accepted?

***Private study yes, relevant skills yes, but not a wider range of compulsory training***

Q5 Do you agree that there should be no compulsory CPD topics for established practitioners, but a balance of activities must be undertaken?

***Yes to the first question, no to the second if it adds to the existing requirements***

Q6 Do you consider that the current system of applying for extensions of time should be continued?

***Yes.***

Q7 Do you agree that there should be no waivers of CPD requirements for barristers who wish to retain their practising certificates?

***No, I most certainly do not agree. I practise international law in international courts/arbitrations so the present system is almost wholly irrelevant to me. I would be an obvious candidate for a complete waiver.***

Q8 Has the system of accreditation of CPD providers and courses by the BSB outlived its usefulness, indicating that it should be replaced by the proposed system of barristers recording their own ‘verifiable’ and ‘nonverifiable’ activities?

***I am not persuaded the system ever had any use in the first place. Asking barristers to record their “activities” begs the question what activities you have in mind.***

Q9 Would a new system based on a barrister’s ***Declaration*** on application for the renewal of the practising certificate, together with retention by the barrister of a ***Portfolio*** recording CPD activities (for monitoring and sampling purposes) be an effective means of ensuring CPD compliance?

***Yes, but again it depends on what activities you have in mind.***

Q10 Should the New Practitioners’ Programme be retained substantially in its present form but based on an annual return as opposed to over a three year period?

***No view.***

Q11 Should the Forensic Accounting Course be retained substantially in its present form (but with some improvements to content and delivery)?

***No view.***

Q12 Do you have any other comments on any of the recommendations or the proposed new system as detailed in Chapter XVI of the Report or in the draft Handbook?

***Only that there may as always be special cases for which the rules should make allowance. International lawyers and arbitrators are a very small fraction of the English Bar, but a very large part of the international Bar. It would be prudent to ensure that you do not inadvertently kill off one of the Bar’s great specialities – and one that brings a great deal of work to the UK.***

**A.E.Boyle**

**Essex Court Chambers**

**18 October 2011**

**From: James Willan**   
**Sent:** 18 October 2011 18:15  
**To:** Consultation  
**Subject:** Response to consultation

Dear Sir/Madam,  
Please see attached my response to your consultation.

**Q1 Do you think that the fundamental approach to CPD requirements should**

**continue to be based on a system defined by the number of hours of**

**CPD undertaken annually?**

Yes.  There is no other workable alternative.

**Q2 Do you agree with the proposed new approach for CPD that will, as a**

**single but five-fold strategy (1) increase the range of approved CPD**

**activities; (2) increase the number of CPD hours per annum; (3) raise the**

**standard of record-keeping; (4) simplify the system of reporting, and (5)**

**simplify enforcement of the CPD Regulations?**

No. It is obviously desirable that the range of approved CPD activity includes any activity that serves the identified purposes (Report, para. 92).  However, this should not be at the cost of (i) increasing the number of CPD hours; or (ii) (more importantly) imposing yet further bureaucratic processes for demonstrating compliance on practitioners.

**Q3 Do you agree that with the more flexible definition of CPD (Report**

**paragraph 117) the required number of hours should be increased from**

**12 to 24 hours per annum?** No.  12 hours of CPD, in addition to the inevitable learning done ‘on the job’ (in researching cases, discussing cases as part of a team, etc) which cannot be counted, is sufficient.  There is no evidence to support the view that barristers, with the current 12 hour requirement, lack up-to-date knowledge and skills (and none is cited in the report).  The evidence of public perception is not based on evidence, but unreasoned suspicion (Report, para. 119) – again, there is no evidence that there is public concern as to the competency of barristers.

Comparisons with the higher number of hours required by, for example, doctors are therefore unfair because hours spent ‘on the job’ can be counted towards CPD in such professions.

**Q4 Do you think that (if more hours are required) acceptable activities**

**should include private study, relevant professional and personal skills,**

**and a wider range of training activities than is currently accepted?**

Yes, if the number of hours is increased, the range of activities should be expanded to include anything which contributes to continuing professional development.

**Q5 Do you agree that there should be no compulsory CPD topics for**

**established practitioners, but a balance of activities must be undertaken?**Yes.  It would be impossible to prescribe compulsory activities given the varied nature of the profession, but it is appropriate that there should be a mix of activities.

**Q6 Do you consider that the current system of applying for extensions of**

**time should be continued?** I have no view on this issue.

**Q7 Do you agree that there should be no waivers of CPD requirements for**

**barristers who wish to retain their practising certificates?**

I have no view on this issue.

**Q8 Has the system of accreditation of CPD providers and courses by the**

**BSB outlived its usefulness, indicating that it should be replaced by the**

**proposed system of barristers recording their own ‘verifiable’ and ‘nonverifiable’**

**activities?**

I agree.  The accreditation process is a disproportionate means of ensuring that CPD of professional value is undertaken, given (in particular) the cost of obtaining accreditation.

**Q9 Would a new system based on a barrister’s *Declaration* on application**

**for the renewal of the practising certificate, together with retention by the**

**barrister of a *Portfolio* recording CPD activities (for monitoring and**

**sampling purposes) be an effective means of ensuring CPD compliance?**

I do not disagree that a fuller CPD form, requiring a brief explanation of the nature of the activity and its relevance to an individual’s practice, is appropriate (say, two or three sentences).

It seems to me that the requirement for a bare declaration, with the barrister simply keeping records for inspection, is likely to cause more problems than it solves.  Moreover, the submission of the CPD form can surely be used to target audits effectively, rather than simply undertaking audits at random.

I disagree strongly with the requirement to prepare a portfolio.  This “reflective account”, with “comprehensive records (with evidence)”, is likely to impose a significant burden on practitioners.  For instance, I expect that I could complete a great many hours of private study of materials to keep up-to-date with the law (not least because I read updates and case summarises on a daily basis to maintain up-to-date knowledge): is it seriously intended that I should be required to note this on a daily basis with a reflection on what I have learnt from the process?  This process will only serve to use up valuable time, and to bring the CPD regime into disrepute with practitioners who will (rightly) see it as a box-ticking exercise rather than as facilitating valuable professional development.  It is likely to produce severe difficulties in monitoring and compliance as views will legitimately differ as to what is sufficient evidence of non-verifiable hours.  It seems to me that one could easily spend as much time preparing the portfolio as performing actual CPD.  It seems to me that requiring barristers to keep copies of receipts and adverts for lectures, etc to prove participation is a retrograde step; this is unlikely to prevent “CPD fraud” (e.g. claiming for events which have not been attended) but will impose an unnecessary burden on honest practitioners.  The portfolio will, in my view, do nothing to improve CPD compliance but will dramatically increase the burden on individuals.

**Q10 Should the New Practitioners’ Programme be retained substantially in its**

**present form but based on an annual return as opposed to over a three**

**year period?**

Yes, but a requirement for annual returns should not be imposed: the first three years of practice are sufficiently onerous that it is sensible to allow a new practitioner to spread the CPD over that period as best fits the demands of the job.  I also regard the increase to 72 hours as unjustified and counterproductive.

**Q11 Should the Forensic Accounting Course be retained substantially in its**

**present form (but with some improvements to content and delivery)?**

Yes.  I do not regard it as necessary for the BSB further to regulate the content of the FAC, although it may be that general guidance (such as ensuring that lecturers are aware of what is being taught in other sessions) may be appropriate as part of the BSB’s ongoing quality assurance of its accredited provider.

**Q12 Do you have any other comments on any of the recommendations or the**

**proposed new system as detailed in Chapter XVI of the Report or in the draft Handbook?**

The proposed system of audit, which will involve at least 1% of the profession discussing their CPD compliance with a senior member of the profession every year, is (in my view) wholly unnecessary and, again, imposes a disproportionate compliance burden on the profession.  It should be possible to assess from the form (or, if necessary, from questions in writing) whether the CPD requirements have been met without routine interviews of practitioners.

Yours faithfully,

**James Willan**

**From: Vernon Flynn**   
**Sent:** 18 October 2011 18:11  
**To:** Consultation  
**Subject:**

Before answering the particular questions below, I should also say that I fundamentally disagree with the way in which the questions have been formulated. They are designed to get a particular answer.

Q1 Do you think that the fundamental approach to CPD requirements should continue to be based on a system defined by the number of hours of CPD undertaken annually?

If there is to be a CPD system at all, an hours based approach is appropriate. I have very serious doubts about the utility of a CPD system at all.

Q2 Do you agree with the proposed new approach for CPD that will, as a single but five-fold strategy (1) increase the range of approved CPD activities; (2) increase the number of CPD hours per annum; (3) raise the standard of record-keeping; (4) simplify the system of reporting, and (5) simplify enforcement of the CPD Regulations?

1. If there is to be a CPD requirement, I agree with an increase in the range of approved activities, but I fundamentally disagree with requiring 50% of the hours to be “verifiable” (See answer 9, 12 below).  A simple change to 12 hours to be performed as the practitioner thinks best, would be much better.  If there are to be “verifiable” hours a much lower number is a more realistic and proportionate.
2. No. I favour a reduction in the number of hours.
3. No.  It is a waste of time which will yield no actual improvements in compliance and impact most negatively those who best comply (see answer 9)
4. Yes, but query whether the CPD system is appropriate in any event (see answer 9).
5. The regulations should be simplified by reducing or eliminating the need for CPD and self-verification.

Q3 Do you agree that with the more flexible definition of CPD (Report paragraph 117) the required number of hours should be increased from 12 to 24 hours per annum?

Absolutely not.

Q4 Do you think that (if more hours are required) acceptable activities should include private study, relevant professional and personal skills, and a wider range of training activities than is currently accepted?

This should be the case with the current requirement of 12 CPD points which is already unnecessary or disproportionate. Whether or not more hours are required the range of acceptable activities should be broadened to include (in particular) private study.  The very best CPD is done by this means.  Indeed (given the very low utility of most lectures on offer)  the most efficient and productive way for most people of fulfilling their entire CPD requirement would be by private study and/or writing articles.

Q5 Do you agree that there should be no compulsory CPD topics for established practitioners, but a balance of activities must be undertaken?

There should be no compulsory topics, but there is no need to require a balance of activities to be undertaken.  What is this “balance” to be for most EP’s?  Between lectures (verifiable) and private study/writing?  Most lectures, talks and seminars are of very little practical utility as a means of CPD.  It should be left to practitioners to decide whether there is any such event or events in a particular year which are genuinely likely to assist in their CPD.  If (as is frankly quite often the case) there is not, they should be free to confine themselves to private study.  There is no limit to the amount of private study which can provide real, useful CPD.

Q6 Do you consider that the current system of applying for extensions of time should be continued?

Yes and they should be generously and freely granted.

Q7 Do you agree that there should be no waivers of CPD requirements for barristers who wish to retain their practising certificates?

Yes, but on the basis that the number of CPD hours is reduced and the requirements made easier.

Q8 Has the system of accreditation of CPD providers and courses by the BSB outlived its usefulness, indicating that it should be replaced by the proposed system of barristers recording their own ‘verifiable’ and ‘nonverifiable’

activities?

Yes, but a new system should reduce the requirements and make them easier to record.

Q9 Would a new system based on a barrister’s ***Declaration*** on application for the renewal of the practising certificate, together with retention by the barrister of a ***Portfolio*** recording CPD activities (for monitoring and sampling purposes) be an effective means of ensuring CPD compliance?

No (insofar as the Portfolio goes, at least).  It will be no better than the current system.  If there is to be a CPD system (and, in the light of (i) this fundamental division amongst practitioners and (ii) the impossibility of policing any system effectively I seriously doubt the utility of the system in practical terms), it should be based on a simple declaration.  It creates less work for those who are honest, when the more complex system will not stand in the way of those who are not.

Q10 Should the New Practitioners’ Programme be retained substantially in its present form but based on an annual return as opposed to over a three year period?

No view.

Q11 Should the Forensic Accounting Course be retained substantially in its present form (but with some improvements to content and delivery)?

No view.

Q12 Do you have any other comments on any of the recommendations or the proposed new system as detailed in Chapter XVI of the Report or in the draft Handbook?

Yes:  the division between “verifiable” and “non-verifiable” hours is highly undesirable.  It appears to be based on an assumption that “collegiality” is a desirable thing, and that collegiality is part of CPD.  I am far from convinced that it is a desirable thing per se and in any event should not be imposed upon practitioners.  Even if it is desirable, it does not form part of CPD (see definition of CPD) – and the system for CPD (if there is to be such a system) should concentrate on the best way of delivering the best CPD for practitioners, and not on extraneous matters.  I also (frankly) seriously doubt the assumption that forcing people to go to lectures etc as part of CPD encourages collegiality.  Without CPD, people go to a lecture if they want to hear it, and are more likely to stay, mingle and discuss at the end.  Forcing these events into the straitjacket of CPD ensures there are a lot of people who are there only for points and are concentrating on getting in and out in the shortest time possible.  This “rush for the door” actually detracts from such events as ones which make for a collegiate atmosphere.

**From: Graham Dunning**   
**Sent:** 18 October 2011 17:04  
**To:** Consultation  
**Subject:** Proposed CPD changes

Dear Sir or Madam,

I strongly disagree with the proposed changes.

In my view, they would constitute the creation of an unnecessary bureaucratic “tick box” system, which will serve no one’s interest and most importantly not improve standards at all - but simply constitute a substantial burden of wasted time, effort and money for all concerned.

Most senior barristers and in particular silks have many years of practical experience and operate in a highly competitive professional market where they are constantly assessed. This is a far greater driver of professional standards than sitting in lectures and ticking boxes on a form could ever be. The failure to understand this basic fact – which failure underlies the proposed reforms - is a fundamental failure to understand how the profession works and what factors operate to maintain its standards.

Graham Dunning QC

**Response of the Bar Council Working Group**

**to the Consultation Paper on the proposed new system for CPD**

**by the Bar Standards Board CPD Working Group**

**Q1 Do you think that the fundamental approach to CPD requirements should continue to be based on a system defined by the number of hours of CPD undertaken annually?**

1. This seems to us to be the least worse alternative. On the positive side, it is measurable and (subject to the points made below) verifiable. On the negative side, it emphasises quantity at the possible expense of quality. We are however unable to think of a better system that would not involve unacceptable levels of control.

**Q2 Do you agree with the proposed new approach for CPD that will, as a single but five-fold strategy (1) increase the range of approved CPD activities; (2) increase the number of CPD hours per annum; (3) raise the standard of record-keeping; (4) simplify the system of reporting, and (5) simplify enforcement of the CPD Regulations?**

2. We agree in part. Our responses to the individual components of this compendious question are given below.

**Q3 Do you agree that with the more flexible definition of CPD (Report paragraph 117) the required number of hours should be increased from 12 to 24 hours per annum?**

1. We have mixed feelings about this.

4. We of course support the proposition that barristers should engage in an *appropriate* amount of CPD. This was decided, in the relatively recent past, to be 12 hours each year. Any proposal to double this requirement is likely to be viewed by many members of the profession with resentment, and with a demand for an explanation for what has changed over the last few years.

5. The BSB Working Group’s reason for this proposed increase is not provided. Paragraph 119 of its Report states simply “We do not think that 12 hours are *now* enough.” Paragraph 85 states that some barristers (without disclosing their number) consider the current number of hours to be “far too small”. We doubt that that is a view that many in the profession would share. The survey analyses in Annex 7 to the Report do not mention any widespread call for an increase in hours, while the May 2010 survey apparently revealed agreement by 80% of those surveyed with the number of hours required.

6. We note that the Report perceives there to be a “correspondence” between (a) the proposed increase in the amount of qualifying hours and (b) the proposed broadening of the range of qualifying activities. However, while we welcome the greater flexibility and ease of qualification that will be associated with (b), we do not see it as providing any support for (a) – unless the suggestion is that members of the Bar already carry out some of the activities that currently fall outside the permitted range, with the result that the introduction of a more flexible system without an increase in the number of hours would have the consequence that barristers would in fact carry out less CPD after than before the reforms.

7. We doubt whether that would in fact be the case. Most members of the profession will conscientiously increase their skills and experience whatever system is in place. There will be others who will struggle to do so, for reasons good and bad, again whatever the system. Although the introduction of a longer qualifying period is likely to be absorbed by the former category without significant complaint, the increased burden of compliance for the latter category, for whom the provision of greater flexibility is unlikely to be particularly useful, will need a proper explanation.

8. In short, therefore, we do not understand the connection between an increase in flexibility and an increase in the amount of qualifying hours. There may be a case to be made, but we do not think that the Report makes it.

9. We add that we are aware that there is significant opposition to the proposed increase among newly qualified barristers. This is something that we understand will be addressed separately by a response from the Young Barristers Committee.

**Q4 Do you think that (if more hours are required) acceptable activities should include private study, relevant professional and personal skills, and a wider range of training activities than is currently accepted?**

10. Yes – but we think that the range of acceptable activities should be broadened without regard to the question whether the number of qualifying hours should be increased.

**Q5 Do you agree that there should be no compulsory CPD topics for established practitioners, but a balance of activities must be undertaken?**

11. We agree that there should be no compulsory CPD topics for established practitioners – but we have misgivings concerning the concept of “balance”.

12. First, given the emphasis in the Report (with which we agree) on members of the profession being left to decide for themselves what is appropriate, this should surely extend to the range of topics they consider fit?

13. Secondly, what if the barrister is a well rounded competent professional who decides to familiarise himself with a new developing area of the law, and devotes all his yearly CPD to that topic. By any objective standard, that would be viewed as “unbalanced” – but it would surely be wrong to interfere?

14. Thirdly, many barristers in niche areas would already be regarded as unbalanced. What criteria are to be employed in deciding the appropriate “balance” in their areas of practice?

15. Fourthly, who will be competent to inject “balance” into this exercise? Who is to decide that they have a better view than the barrister of what is and is not balanced about his CPD (itself a minor corner of his practice)?

**Q6 Do you consider that the current system of applying for extensions of time should be continued?**

16. Yes.

**Q7 Do you agree that there should be no waivers of CPD requirements for barristers who wish to retain their practising certificates?**

17. Yes.

18. Where a barrister elects instead to suspend the practising certificate, we consider that the Qualifications Committee should have (and should therefore be given) a discretion to decide whether and to what extent it is necessary for that barrister to engage in any CPD upon return, having regard to the particular circumstances.

19. We regard this as particularly important where barristers have suspended their practice while on maternity leave. Due consideration should be given to their experience, years of practice and length of time they have been out of practice. Any requirement to fulfill their CPD must reflect those points. In any event we would support a gradual increase of hours to the required amount during the first 2 years back in practice. In other words they should be allowed to do half the total hours in the first and second years back in practice.

20. We have considerable misgivings in any event over the attempt to apply the concept of CPD to barristers who have been away from the Bar for some time. Most competent practitioners will regard it as essential either to keep abreast of changes in the law during their absence, or to carry out some intensive study on their return. For those who do not, we doubt whether the imposition of a CPD requirement at the rate of one or two hours for every month away will come close to remedying the omission. Hence our suggestion that the exact requirement be left to the discretion of the Qualifications Committee.

**Q8 Has the system of accreditation of CPD providers and courses by the BSB outlived its usefulness, indicating that it should be replaced by the proposed system of barristers recording their own ‘verifiable’ and ‘nonverifiable’ activities?**

21. While we are not sure that it is right to say that the accreditation system has outlived its usefulness, we do agree that the existing policy of approving course providers without quality checks is flawed – and also expensive. We do not see why that system could not be improved, with approved providers (the Inns, the SBAs, etc) who can be trusted to lay on proper activities coninuing to be automatically accredited (without fee), and others receiving accrediation on an ad hoc basis, with proper controls in place, and with the cost tailored to fit individual circumstances.

22. We have reservations concerning the proposed replacement, which will subsitute for accreditation what seems to us (see the criticism below) to be an administratively complex and wasteful record-keeping process, with no control (other than a little after the event appraisal) on the quality of the CPD provider.

23. In those circumstances, we would prefer our own profession to regulate the quality of the provider itself, and for the provider to keep its own records of signatures of attendees (as at present).

**Q9 Would a new system based on a barrister’s Declaration on application for the renewal of the practising certificate, together with retention by the barrister of a Portfolio recording CPD activities (for monitoring and sampling purposes) be an effective means of ensuring CPD compliance?**

24. Yes – in theory. In practice, given the level of detail proposed for the portfolio, we think that the proposed system will be regarded as significantly worse than the old.

25. First, as we remark in paragraph 18 above, the proposed system will impose a much higher administrative requirement upon members of the profession. The only record keeping currently required is the compilation and filing of the annual form. The proposed system, with its requirement to retain records of attendance (what exactly?) seems to us to be cumbersome, and quite probably unworkable in practice, given the disinclination barristers have to indulge in such practices. As matters currently stand, the record of 200 barristers attending an SBA event will consist of the signed record of attendance kept by the SBA. The proposal is that each of the 200 barristers will retain their own documents verifying their attendance. We wonder how many barristers will mislay their documents? We wonder how many of those chosen for sampling will waste theirs and the organisers’ time in an attempt possibly many years after the event to prove their attendance? What purpose does this proposal serve?

26. Secondly, we consider that the parts of the proposed portfolio calling for comment and reflection are likely to be greeted with derision, and treated with neglect. Surely this is not the way members of a highly trained profession should be asked to approach their CPD

27. Thirdly, the new system relies upon random sampling, apparently to reduce the amount of time currently spent by BSB staff (2 to 3 months – paragraph 147) in checking the current forms. No estimate is given for the amount of time that will be spent by BSB staff (quite apart from Heads of Chambers etc) in undertaking the random sampling exercise (paragraphs 148 and 149). The cynical practitioner will be likely to sense an increase in bureaucracy and cost at this point. What is the response to this?

**Q10 Should the New Practitioners’ Programme be retained substantially in its present form but based on an annual return as opposed to over a three year period?**

28. Although the majority are content with this, it is also considered (for reasons to be set out in the YBC response) that the altered requirement will be especially burdensome for young barristers in their first year of practice.

**Q11 Should the Forensic Accounting Course be retained substantially in its present form (but with some improvements to content and delivery)?**

29. Again, although the majority are content with this, we are aware of a significant body who claim that the FAC was not relevant to their area of practice, and was therefore an expensive waste of time. Accordingly, although it undoubtedly benefits those to whom it is relevant, we question why it should continue to be a compulsory part of a barrister’s training..

**Q12 Do you have any other comments on any of the recommendations or the proposed new system as detailed in Chapter XVI of the Report or in the draft Handbook?**

30. We applaud the evident care and thought that has gone into the Report, and we very much agree with the proposed broadening of the range of qualifying activities. We approve the description of activities, and the examples of those within and without the bounds of what is acceptable.

31. However, we consider that the proposed system is too unwieldy. Our experience of collegues in our profession is that they will be likely to find elements of the proposals (particularly the increase in hours and the record-keeping) unsympathetic.

32. We therefore consider that elements of the existing system (including the hours requirement and the record-keeping) should be retained, in the absence of a good explanation to the contrary.

**Guy Fetherstonhaugh QC**

**Ayesha Hasan**

**Fraser Coxhill**

**Tamsin Cox**

**October 2011**

**From: Jern-Fei Ng**   
**Sent:** 18 October 2011 16:55  
**To:** Consultation  
**Subject:** Consultation

Q1 Do you think that the fundamental approach to CPD requirements should continue to be based on a system defined by the number of hours of CPD undertaken annually? **No**

Q2 Do you agree with the proposed new approach for CPD that will, as a single but five-fold strategy (1) increase the range of approved CPD activities; (2) increase the number of CPD hours per annum; (3) raise the

standard of record-keeping; (4) simplify the system of reporting, and (5) simplify enforcement of the CPD Regulations? **No**

Q3 Do you agree that with the more flexible definition of CPD (Report paragraph 117) the required number of hours should be increased from 12 to 24 hours per annum? **No**

Q4 Do you think that (if more hours are required) acceptable activities should include private study, relevant professional and personal skills, and a wider range of training activities than is currently accepted? **Yes**

Q5 Do you agree that there should be no compulsory CPD topics for established practitioners, but a balance of activities must be undertaken? **Yes**

Q6 Do you consider that the current system of applying for extensions of time should be continued? **Yes**

Q7 Do you agree that there should be no waivers of CPD requirements for barristers who wish to retain their practising certificates? **No**

Q8 Has the system of accreditation of CPD providers and courses by the BSB outlived its usefulness, indicating that it should be replaced by the proposed system of barristers recording their own ‘verifiable’ and ‘nonverifiable’activities? **Yes**

Q9 Would a new system based on a barrister’s ***Declaration*** on application for the renewal of the practising certificate, together with retention by the barrister of a ***Portfolio*** recording CPD activities (for monitoring and sampling purposes) be an effective means of ensuring CPD compliance? **Yes**

Q10 Should the New Practitioners’ Programme be retained substantially in its present form but based on an annual return as opposed to over a three year period? **No**

Q11 Should the Forensic Accounting Course be retained substantially in its present form (but with some improvements to content and delivery)? **No**

Q12 Do you have any other comments on any of the recommendations or the proposed new system as detailed in Chapter XVI of the Report or in the draft Handbook? **No**

**Jern-Fei Ng, Essex Court Chambers , 24 Lincoln's Inn Field**

**BSB CONSULTATION PAPER ON CPD**

**RESPONSE FROM GRAY’S INN**

Q1. Do you think the fundamental approach to CPD requirements should continue to be based on a system defined by the number of hours of CPD undertaken annually?

Response: Yes. We agree that a set number of hours is to be preferred so that practitioners know the amount of CPD activity that is expected of them.

Q2. Do you agree with the proposed new approach for CPD that will, as a single but five-fold strategy: (1) increase the range of approved CPD activities; (2) increase the number of CPD hours per annum; (3) raise the standard of record-keeping; (4) simplify the system of reporting, and (5) simplify enforcement of the CPD Regulations?

Response: That (1) and (2) are linked is accepted and the joint strategy approved. (3), (4) and (5) are directed to record keeping and are less obviously linked to (1) and (2). Simplification of reporting and of enforcement are to be supported in principle. While the objective of raising the standard of record-keeping cannot be objected to, it appears from the Report (para 142) that the proposals involve a substantial increase in the record-keeping required. An increase in record-keeping is not a desirable end in itself and could only be justified if it assisted in the achievement of some other objective. If an appropriate standard of record keeping is to be a professional requirement and ultimately a condition of practice, then it is necessary for the required standard of record keeping to be clearly defined (see further below).

Q3. Do you agree that with the more flexible definition of CPD (Report paragraph 117) the required number of hours should be increased from 12 to 24 hours per annum?

Response: The Report provides little by way of justification for the view expressed in paragraph 119 that 12 hours CPD are not now thought to be enough. In so far as this is based on the suspicion that the public will not think 12 hours are enough (para 119) we consider it quite wrong that the BSB as the regulator of the profession should be basing its views on what it suspects to be the public perception. The BSB should be considering what is appropriate to ensure that the profession continues to provide a high standard of service to the public. The Report does not refer to any evidence or reason to suppose that the profession in general is failing to keep itself fit for its duties with the current amount of CPD training. The matters relating to the introduction of CPD referred to in the first part of paragraph 118 of the Report provide no grounds for supposing that 12 hours CPD are not now enough. Nor, in our view, does the comment at the end of paragraph 118 that many barristers register more than the minimum amount. This simply shows the willingness of the many members of the profession to maintain their competence without compulsion. Nevertheless, we do accept that the original figure of 12 hours was based on an unnecessarily restrictive list of approved activities (see sentence commencing “Moreover...” in paragraph 118 of the Report) and, in view of the proposal to widen this substantially, there is justification for increasing the number of CPD hours to be carried out. We accept that an increase to 24 hours could be justified on the basis that for many practitioners this may not significantly increase the burden of CPD but will more accurately reflect the time spent by practitioners in maintaining their competence to practice. There should be no further proposals to increase the hours or overall burden of CPD without evidence that this is necessary to maintain the competence of the profession.

Q4. Do you think that (if more hours are required) acceptable activities should include private study, relevant professional and personal skills, and a wider range of training activities than is currently accepted?

Response: Yes. Without there being such a wider range of acceptable activities, there would be no justification for increasing the number of CPD hours required (see above).

Q5. Do you agree that there should be no compulsory CPD topics for established practitioners, but a balance of activities must be undertaken?

Response: We agree that there should be no compulsory CPD topics for established practitioners but strongly disagree that there should be any requirement that a balance of activities must be undertaken. Such a requirement does not fit well with the Report’s stated aim (which we support) to give greater autonomy to and place greater trust in practitioners (Report para 95 and Finding 12 on page 87). There may be many practitioners for whom a “balance of activities” would be inappropriate. As the Report notes, CPD should be tailored to what the individual practitioner needs (Report para 82). If a practitioner intends to develop his practice in a particular direction it is surely appropriate that CPD activity be concentrated accordingly. For instance, if a practitioner intended to start sitting as a recorder or arbitrator or to practice as a mediator, would it not be appropriate for his CPD activities to be concentrated on preparing himself for such activities? A further and perhaps even more serious objection is that the proposed requirement of balance is vague and lacks definition. It is of vital importance that any requirement that is to be made ultimately a condition of practice should be clear so that practitioners can be certain whether they have complied. Nowhere in the Report is it explained what is meant by a “balance of activities” (paras 123 or 144 might be where one would expect to find such an explanation). A moment’s thought leads to the conclusion that no definition could adequately cover the wide variety of practice types at the bar. The Report’s reasoning for including a requirement of balance appears to be as a justification for not recommending any limit to the number of hours that can be claimed for particular activities (Report para 123). If the BSB is concerned that practitioners should not be entitled to count more than a certain number of hours of particular activities (writing of textbooks and articles was the activity considered at paras 121-122 of the Report) towards their 24 hour total then it would be far better to set such a limit. We do not, however, consider that such limits are necessary or appropriate. If a “balance of activities” is to be included in the requirements then the regulations should make clear that non-compliance with the requirement is not a ground for withdrawing or refusing a practicing certificate unless the practitioner has previously been found not to have achieved a balance of activities and has failed to comply with recommendations as to how he should rectify the position.

Q6. Do you consider that the current system of applying for extensions of time should be continued?

Response: Yes.

Q7. Do you agree that there should be no waivers of CPD requirements for barristers who wish to retain their practising certificates?

Response: Yes. However, those who decide not to maintain their practising certificate should not be prevented from returning to the profession simply because they did not maintain their CPD activity whilst not practising. If intending to return, they could be expected to complete additional CPD hours before returning to practice. For short periods out of practice, additional hours equivalent to those not completed while not practising could be required. For longer periods, a maximum requirement of, say, the equivalent of 3 years CPD training could be required.

Q8. Has the system of accreditation of CPD providers and courses by the BSB outlived its usefulness, indicating that it should be replaced by the proposed system of barristers recording their own ‘verifiable’ and ‘non-verifiable’ activities?

Response: Yes. The current system of accreditation appears no longer to fulfil any useful purpose. However, the current system does have the great advantage of simplicity and certainty. Any practitioner attending an event accredited for a given number of CPD hours knows that he has (subject to the event being relevant to the practitioner’s present or proposed areas of practice) complied with that proportion of his annual CPD obligation. Any replacement system should retain, as far as possible, the simplicity and certainty of the current system. The proposed tables of examples of activities that do and do not count (Tables 6 and 7) are admirably short and clear. We agree that it is appropriate for the tables to be non-exhaustive (Report para 114) but are concerned that a practitioner’s value judgement as to whether an activity not specifically listed in the Tables falls within the general definition of acceptable activities or not could be called into question and ultimately be a condition of entitlement to practice years after the judgement was made. To address these concerns we propose:

(1) A helpline to which queries as to the acceptability of activities not specifically listed could be addressed. We appreciate that the BSB is short of funds and suitably qualified staff. However, we would consider it to be wholly unsatisfactory if a regulator such as the BSB was unable to provide such guidance. If the BSB is intending to give itself the power to disapprove of a practitioner’s choice of CPD activity and sanction him when it is too late for the practitioner to make good any deficiency, it is surely right for the BSB to provide a means by which practitioners can check the acceptability of any activity choice they make at the time when the choice has to be made. In that way substitute activities can be undertaken as necessary so that the practitioner is not at risk of sanction. Any administrative burden would, in any event, be likely to reduce once the new system had bedded in. A list of answers given to queries raised could be published to give future guidance.

(2) A clear statement in the regulations that a bona fide but mistaken view taken as to whether an activity was acceptable or not would not result in the withdrawal of a practising certificate.

Q9: Would a new system based on a barrister’s ***Declaration*** on application for the renewal of the practising certificate, together with retention by the barrister of a ***Portfolio*** recording CPD activities (for monitoring and sampling purposes) be an effective means of ensuring CPD compliance?

Response: Yes. Confirmation of compliance by means of a Declaration is appropriate. The draft form of the Declaration includes a concise list of the matters that the declaration covers. This is to be welcomed so that a barrister can be clear what he is undertaking by signing the Declaration. We suggest amending the draft to include a statement that a written record (Portfolio) of CPD activities undertaken in the year in question has been completed. Whilst it is appropriate not to be specific as to the evidence required for verifiable activities, such a statement will help ensure proper and timely recording of the year’s CPD activities. As regards the contents of the Portfolio, if proper recording is to be a professional requirement and potentially a condition of being granted a practising certificate, it is important for it to be clear precisely what is required to be included in the Portfolio. We are all now familiar with forms some sections of which are “required” and others are not. It should be considered whether completion of some parts of the proposed Portfolio could be simply encouraged and that only the parts of the form that are vital to ensure compliance with CPD requirements are stated to be required to be completed. For instance, completion of the section for reflection and self evaluation (Report p.138), whilst no doubt helpful to assist a barrister to think about the type of CPD activities he undertakes, is not, it is suggested, sufficiently important for any failure to be subject potentially to withdrawal of a practising certificate. Similar comments could apply to the box for reasons for attending and reflections on own learning (Report p.139-140). In the case of many activities the reason for undertaking them will be obvious from the nature of the activity.

Q10. Should the New Practitioners’ Programme be retained substantially in its present form but based on an annual return as opposed to over a three year period?

Response: Yes.

Q11: Should the Forensic Accounting Course be retained substantially in its present form (but with some improvements to content and delivery?).

Response: Yes. The current monopoly of provision does not appear to be justified and allowing other providers to compete might help achieve improvements in content and delivery.

Q12: Do you have any other comments on any of the recommendation or the proposed new system as detailed in Chapter XVI of the Report or in the draft Handbook?

Response: As will be apparent from the above, we support the proposals in general but have concerns that practitioners should not be put at risk of having their practicing certificates withdrawn by reason of bona fide but mistaken judgements as to what is required by the proposed revised rules. In this connection we add the following comments:

(1). The proposals relieve the BSB of some of its current functions (e.g. accreditation and checking of annual returns) but place more onus on practitioners to select appropriate activities of adequate quality and in record keeping. This is not necessarily a bad thing but, since compliance is in the end a condition of practice, it is important that practitioners have easy access to the applicable rules and that any rules are kept as simple and clear as possible. The proposed Portfolio form could perhaps be usefully expanded to include the definition of qualifying CPD activities and the tables of non-exclusive examples of activities that do and do not count (Tables 6 and 7). A web address should be given where further detailed rules and guidance could be found. A hard copy Portfolio form could be sent to each practitioner at the start of the year (as well as being available on-line). This would then form a handy vade-mecum to assist practitioners to choose appropriate CPD activities and to record them.

(2). Well organised practitioners will no doubt keep their Portfolio up to date throughout the course of the year. Many will not. CPD activities are often arranged at the end of the day after which the practitioner returns home so that recording of the activity is likely to be delayed. It should not be a requirement that the Portfolio should be kept up to date at all times though this could be encouraged. Before making his annual Declaration, however, a practitioner will need to have recorded his CPD activities for the year. It is proposed that it be a requirement that practitioners complete their Portfolio before signing their Declaration. As suggested above (Q9), a reminder of this requirement could usefully be included in the form of annual Declaration.

(3). Record keeping is not something that the Bar is, traditionally, good at. We suggest that practitioners be encouraged to organise the task of maintaining CPD records on a chambers basis. Special assistance for sole practitioners might be required.

(4). Many sets of chambers already organise CPD activities. Given the proposed wider range of acceptable activities, greater participation of chambers (or for smaller sets, groups of chambers) in the provision of CPD training should be encouraged.

(5). Lastly we would point out a minor error at para 163 of the Report. It is not correct that Gray’s Inn provides NPP courses at the Inn’s own premises in London. The Inn provides residential courses out of London.

12 Oct 2011

Dear BSB CPD Consultation team

Please find below my response to this consultation. I have been the BSB's lay Independent Observer since May and so have some understanding of CPD and the BSB's current enforcement approach (own motion complaints etc) but have not yet reviewed many case files. I offer these comments and suggestions in that context.

Isobel Leaviss

BSB Independent Observer

07788 974849

Q1 Do you think that the fundamental approach to CPD requirements should continue to be based on a system defined by the number of hours of CPD undertaken annually?

Yes on balance. With the onus on barristers to use their time on relevant, valuable activity. Rather than the cost/effort required to assess/measure/enforce quality.

Q2 Do you agree with the proposed new approach for CPD that will, as a single but five-fold strategy (1) increase the range of approved CPD activities; (2) increase the number of CPD hours per annum; (3) raise the standard of record-keeping; (4) simplify the system of reporting, and (5) simplify enforcement of the CPD Regulations?

No strong view on (1) or (2). But strongly agree with (3), (4) and (5). From what I have seen, the BSB incurs considerable effort/cost establishing and following up on non compliance.

Q3 Do you agree that with the more flexible definition of CPD (Report paragraph 117) the required number of hours should be increased from 12 to 24 hours per annum?

No strong view.

Q4 Do you think that (if more hours are required) acceptable activities should include private study, relevant professional and personal skills, and a wider range of training activities than is currently accepted?

Yes. It strikes me that barristers will largely keep up to date with their field(s) of practice as part of their normal commitments and case preparation etc but that CPD should be more about developing skills and promoting/maintaining the highest standards of professional practice.

Q5 Do you agree that there should be no compulsory CPD topics for established practitioners, but a balance of activities must be undertaken?

I agree that a balance of activities is probably healthy. But query the definition of balance and on what basis this would be assessed/judged. Neither were clear to me from the consultation documentation.

I would have expected certain annual compulsory elements e.g. ethics, customer care, equality and diversity, ?money laundering. I understand that some of these already form part of initial training but suggest that there would be value in annual 'refreshers' which could include recent case studies - both to promote best professional practice and highlight how things can go wrong and what the consequences are.

There could even be a compulsory hour delivered by the BSB (eg podcast ?) on the Code (eg highlighting any updates), practicing certificate/CPD requirements and any other relevant industry-wide developments.

Q6 Do you consider that the current system of applying for extensions of time should be continued?

No strong view. But I suggest that the approach might be simplified e.g. applications online and BSB staff with authority to grant extensions rather than requiring a Committee (in all but the most exceptional circumstances) ?

Q7 Do you agree that there should be no waivers of CPD requirements for barristers who wish to retain their practising certificates?

Yes. But where barristers have taken a break from practice but not necessarily suspended their certificates (eg maternity leave) then I suggest there could be an automatic time extension to enable them to 'catch up'.

Q8 Has the system of accreditation of CPD providers and courses by the BSB outlived its usefulness, indicating that it should be replaced by the proposed system of barristers recording their own ‘verifiable’ and ‘nonverifiable’ activities?

No strong view.

Q9 Would a new system based on a barrister’s Declaration on application for the renewal of the practising certificate, together with retention by the barrister of a Portfolio recording CPD activities (for monitoring and sampling purposes) be an effective means of ensuring CPD compliance?

Yes but suggest the online declaration could be accompanied by a simple online record of time/activity/topic using drop-down menus and categories (so that it could be checked automatically to ensure overall time requirement met, verifiable/non-verifiable percentage satisfied and 'balance' of activities tested) with the barrister retaining verification docs etc. as proposed.

I am surprised that there does not appear to be a front line role for Chambers or employers in overseeing/validating/countersigning CPD compliance by their barristers. Has this been considered ?

Q10 Should the New Practitioners’ Programme be retained substantially in its present form but based on an annual return as opposed to over a three year period?

No strong view but instinctively prefer keeping it simple i.e. annual.

Q11 Should the Forensic Accounting Course be retained substantially in its present form (but with some improvements to content and delivery)?

No strong view.

Q12 Do you have any other comments on any of the recommendations or the proposed new system as detailed in Chapter XVI of the Report or in the draft Handbook?

No.

**Submissions from Maurice Aston, 5 Paper Buildings, Temple.**

The proposed change to the Bar’s Continued Professional Development fails to give sufficient weight for the need for flexibility for the individual; in particular there is a failure to recognise what a practitioner does on a daily basis. Any Barrister who regularly appears in the senior courts is necessarily subject to constant judicial scrutiny and by necessity is required to keep up to date. The opposite is not true of the Barrister who works daily in private from his Chambers or office. Accordingly, a Bar wide set of CPD rules fails to recognise those obvious differences in practice and in my view is wrong; put another way in regards to CPD regulations “one size does not fit all”. It is my submission that recognition should be given to Counsel who conducts a practice exclusively in the public domain with that constant judicial supervision. Such recognition is easily achieved by allowing some of the verifiable CPD hours to be counted against a set number of appearance days in court in any given year.

A flexible approach in the CPD rules would better achieve the core aims and objectives of CPD. Those aims are to constantly update the practitioner’s skill set and highlighting and rectifying gaps in the individual’s knowledge and experience[[1]](#footnote-1). Counsel who appear daily in the senior courts is constantly keeping up to date with constant judicial control.

Furthermore the need to better tailor the rules towards the individual rather than the profession as a whole is highly desirable because the focus of CPD is firmly based on results and the benefits that professional development can bring in the real world to the individual, not the organisation. Perhaps the most important message is that one size doesn’t fit all[[2]](#footnote-2).

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**Response of the COMBAR Equality and Diversity Committee to the Consultation Paper on the new proposed system for CPD.**

**Introduction.**

1. This is the response of the Equality and Diversity (**E&D**) Committee of the Commercial Bar Association for England and Wales (**COMBAR**) to the Consultation Paper (**Consultation**) published in relation to the Bar Standards Board’s Review of Continuing Professional Development (**CPD**).

**Who we are.**

1. COMBAR is a Specialist Bar Association, representing self-employed and employed barristers who practise in the field of international and commercial law. Its members consist of thirty seven sets of chambers mainly in London where barristers practise in this field, together with a number of individual and honorary members. The great majority of leading practitioners at the Commercial Bar of England and Wales are members of COMBAR.
2. The Equality and Diversity (‘E&D Committee’) is comprised of individual members of COMBAR and is tasked with considering issues relating to equality and diversity as they affect the Commercial Bar.
3. COMBAR has not submitted its own response to the consultation. However, the COMBAR E&D Committee feels strongly that certain aspects of the new system impact adversely on certain sections of the Bar and will potentially have unfair and unreasonable effects. It accordingly responds to those limited aspects in this document. The other aspects of the Consultation are not dealt with in this response.

**The proposals as to waiver of CPD.**

1. We are particularly concerned about the proposals for waiver of CPD and how they impact on members of the Bar who take career breaks, particularly maternity leave. The Consultation (paragraph 128) suggests that a waiver should not normally be granted in the case of a barrister who goes on leave (but does not suspend her practising certificate).
2. We strongly disagree with these proposals, and are particularly concerned about their impact when combined with the proposal to double the amount of CPD hours from 12 to 24. The reasons for this are set out below.
3. Firstly, we consider it unrealistic and unfair to expect the carer of a newborn baby to ‘keep up’ CPD during their period of leave. This is so even taking account of the proposal to widen the range of qualifying activities. Some members of the Bar can afford childcare while on leave but many others cannot, and the reality is that a full time carer of young children has very little time for private study.
4. Nor is it fair to expect people to ‘catch up’ when they come back. It is challenging to come back to work after having a baby and there are very many demands on one’s time. Childcare is expensive, and no doubt makes a very significant inroad into the incomes of many practitioners. Barristers need to be able to focus on rebuilding their practices on return to work.
5. The need for continuing education is adequately served by requiring barristers to complete CPD from the point at which they come back.
6. We also consider that insufficient consideration has been given to the arbitrariness of the system depending on when the return from leave takes place. Given that the CPD system operates on a calendar year, the new mother who returns to work in December might be faced with having to complete all or most of her 24 hours in the space of a few weeks (or apply urgently for an extension of time).
7. In our view, extensions of time are not the answer to this problem. They often take several weeks to be considered and granted by the BSB. Furthermore, the BSB seeks to levy a substantial fee in respect of such extensions, which is in our view arguably indirectly discriminatory since if the proposed system is implemented we think it highly likely that more women than men will need to apply for extensions. Furthermore there is the element of uncertainty, particularly given the discretionary nature of the power to grant an extension, and the amount of time they take to be granted. This makes it very difficult for the responsible practitioner to organise their commitments properly, particularly in light of the serious professional conduct implications of failure to comply with the CPD requirements.
8. We also have concerns in this context about the proposed increase in required hours from 12 to 24. Even though it is suggested that the range of qualifying activities will be wider, we note that half of the 24 hours need to be ‘verifiable’ and thus capable of documentary proof. Private study will not satisfy this requirement and it is expected that the 12 verifiable hours would be likely to be satisfied by attendance at ‘collegiate events’, i.e. lectures and seminars where the providers will hand out a certificate showing attendance.
9. This is much more onerous than the current system for the putative new mother returning to work. The ‘collegiate events’ are normally in the late afternoon evening or weekends. We consider that it is simply not realistic to expect a barrister on leave as the sole carer of a newborn baby to attend collegiate events during the period of leave. Nor do we consider that it is fair or proportionate to require such a person to catch up 12 hours of ‘verifiable’ activities on their return to work. The hardship in such a requirement will be particularly marked in the case of those who return towards the end of the year, for the reasons we have already explained.
10. Finally we note the argument made in the Consultation that those on leave should suspend their practising certificate thereby suspending the requirement for CPD (although we note that paragraph 129 of the Consultation goes onto state that even this should not normally excuse a barrister from catching up with CPD when he or she wishes to return to work. It appears – although this is unclear – that some kind of discretion will be exercised in this regard).[[3]](#footnote-3)
11. In our view, expecting those on maternity leave to suspend their practising certificate as a matter of course is misguided and unrealistic:
    1. It is at odds with guidance to Chambers aimed at encouraging women to return to work and at implementing practices that will allow for more flexible working (inc. the BSB’s stated policy that Chambers should be encouraged to respond positively to members’ wishes to work during maternity leave).
    2. Further, it shows a profound lack of understanding as to the steps many women have to take whilst on maternity leave to enable their practices to survive over their period of absence such as taking calls, responding to e-mails or giving periodic advice on a long running matter, dealing with a draft judgment provided during their period of leave.
    3. Inevitably, suspending a practising certificate affords the barrister in question no flexibility and may well cause him or her difficulties e.g. as to the terms of his or her tenancy and insurance arrangements.
    4. It is also at risk of discriminating against women for the purposes of meeting criteria as to years in practice such as in relation to applications to sit as a recorder.
    5. It will no doubt be said that if there is a need for a practising certificate then there is a need for CPD. In our view this does not follow. It is perfectly possible for a busy female barrister with demanding clients to need to deal with one or two minor queries or administrative matters without in any way being back at work in any real or practical sense. Furthermore, she may not know in advance whether she might need to deal with such issues in advance. To suspend a practising certificate would preclude any useful contact with clients at all during the period of leave, which runs the risk of alienating demanding commercial clients. In our (admittedly anecdotal) experience, commercial barristers going on maternity leave never take the step of suspending their practising certificate.
12. In any event, it appears from the Consultation that even suspending a practising certificate will not excuse a barrister from having to catch up those hours on return to work, which we regard as unfairly onerous for the reasons set out above.

**Conclusions and alternative suggestions**

1. We suggest that too little attention has been paid historically to the demands of CPD on those taking career breaks, and the proposal to double the amount of CPD required throws this issue into sharp relief. We consider that it places an unduly onerous burden either to require CPD to be continued while on leave or to require barristers to catch up with their CPD requirements on return to work.
2. The retention of women at the Commercial Bar (and the Bar as a whole) is an issue of real concern for the profession, particularly given the desire to see a more diverse Bench. This will only be possible if more women are able to continue their careers to Silk and beyond. We feel strongly that the BSB should be focussed on making it easier for women who have been on maternity leave to return to work, within the bounds of the need to maintain appropriate standards within the profession.
3. We suggest an alternative approach as follows:
   1. Any barrister who takes period of parental leave of up to one year to be the sole carer of a child should be granted an automatic and permanent waiver of his or her CPD requirements in proportion to the time spent away. He or she should not be required to make an application for this waiver or pay a fee. The only qualifying requirement should be a letter from his or head of Chambers certifying the period and purpose of the leave.
   2. On return, the obligation to complete the remaining CPD hours for that year will automatically revive
4. We do not consider that granting an automatic waiver of CPD for those on leave will realistically compromise standards or place clients at risk. We think there are considerable benefits to a system which eases the burden on those returning to work in a demanding profession which frequently involves working long hours under considerable pressure. There is also a great advantage to the certainty of our proposed alternative; the barrister returning to work will know in advance where they stand in relation to CPD, without the need to require the BSB to exercise its discretion.

**From: Nazeer Chowdhury**

Sent: 19 October 2011 20:28

To: Consultation

Subject: Consultation

Q1 Do you think that the fundamental approach to CPD requirements should continue to be based on a system defined by the number of hours of CPD undertaken annually?

Yes

Q2 Do you agree with the proposed new approach for CPD that will, as a single but five-fold strategy (1) increase the range of approved CPD activities; (2) increase the number of CPD hours per annum; (3) raise the standard of record-keeping; (4) simplify the system of reporting, and (5) simplify enforcement of the CPD Regulations?

(1) Yes

(2) No

(3) No

(4) Yes

(5) No

Q3 Do you agree that with the more flexible definition of CPD (Report paragraph 117) the required number of hours should be increased from 12 to 24 hours per annum?

No I do not think a more flexible definition should lead us to increase the hours per annum. 12 hours is more than enough and I suggest a reduction in that figure.

Q4 Do you think that (if more hours are required) acceptable activities should include private study, relevant professional and personal skills, and a wider range of training activities than is currently accepted?

Yes

Q5 Do you agree that there should be no compulsory CPD topics for established practitioners, but a balance of activities must be undertaken?

Yes

Q6 Do you consider that the current system of applying for extensions of time should be continued?

In my view, the current system should be continued

Q7 Do you agree that there should be no waivers of CPD requirements for barristers who wish to retain their practising certificates?

No, I think that discretion to waive should be maintained

Q8 Has the system of accreditation of CPD providers and courses by the BSB outlived its usefulness, indicating that it should be replaced by the proposed system of barristers recording their own ‘verifiable’ and ‘nonverifiable’ activities?

Yes

Q9 Would a new system based on a barrister’s Declaration on application for the renewal of the practising certificate, together with retention by the barrister of a Portfolio recording CPD activities (for monitoring and sampling purposes) be an effective means of ensuring CPD compliance?

Absolutely not. This sort of detailed CPD diary is just the sort of additional burden that should be avoided, if possible.

Q10 Should the New Practitioners’ Programme be retained substantially in its present form but based on an annual return as opposed to over a three year period?

No, I think it should remain as it is i.e. over three years.

Q11 Should the Forensic Accounting Course be retained substantially in its present form (but with some improvements to content and delivery)?

Yes. It would benefit from some improvements; on the whole I found it useful.

Q12 Do you have any other comments on any of the recommendations or the proposed new system as detailed in Chapter XVI of the Report or in the draft Handbook?

No

**From: Karen Hammond**

Sent: 24 October 2011 14:00

To: Consultation

Subject: BPP response to CPD consultation

Attachments: Response to Bar Standards Board Consultation.v3.docx

Dear Valerie

Please find attached the BPP response to the above consultation.

Can I take this opportunity to thank you for your help in discussing the Forensic Accountancy Course with me earlier this year.

Needless to say, if there is any further information with which I can help you, do please get in touch.

Kind regards

Karen

Karen Hammond LL.B.

Head of Public Sector training

**BPP response to Bar Standards Board Consultation**

**Question 11**

**Should the Forensic Accounting Course (FAC) be retained substantially in its present form (but with some improvements to content and delivery)?**

BPP’s response to the above question is “yes”.

The detailed reasons for our response, together with underlying evidence, are set out below.

1. **Background**

The FAC has been provided nationwide by BPP in partnership with forensic accountancy specialists BDO LLP under an exclusive three-year contract with the BSB.

The initial period of the contract expired in 2010. It has been extended on a yearly basis pending the outcome of this [CPD] review. BPP charges a fee of £340 + vat for attendance.

The course is run about 20 times per year with about 500 attendees over the year (Para. 181)

1. **The findings of the Working Group**

The Forensic Accounting Course (FAC) is considered in part XV of the report at paragraphs 180 – 188.

*Two members of the working group, including the accountant member, attended and observed a civil FAC. They found the course to be well-organised and well-taught. The written materials were extensive and useful for future reference. The tutors were knowledgeable and enthusiastic.*  [184]

The report then goes on to identify the scope for “minor improvements” described as follows:

1. The E-learning materials were relatively uninspiring
2. The written materials needed a small amount of updating
3. The tutors [for the respective days) should communicate more effectively
4. The tutors could have made greater reference to the written materials which would give much of the detail for which there was insufficient time during the course

However, these were described as *“relatively minor observations which did not detract from generally positive conclusions”.*

The conclusion and recommendation appears at R28:

*The Forensic Accounting Course is in need of minor improvements [184]. Subject to those changes it should be retained substantially in its present form [187]*

1. **BPP comments**

BPP agrees and makes the following comments:

The minor improvements suggested are those already identified by BPP. They have been addressed as follows:

* 1. More rigorous systems have now been put in place for analysis and consideration of feedback forms*.* All feedback forms will now be considered and the score analysed. Any presenter who fails to achieve an average of less than 4.3 out of 5 will be referred to the programme leader for discussion and action.
  2. A new project team has been put in place headed by the Head of Public Sector Programmes with specialist input from the Finance and Tax team as well as our BDO forensic accountancy partners. The team has as its first function to conduct a review of the e-learning and other materials
  3. The written materials have already been updated
  4. A different delivery model has been identified whereby the same tutor will deliver both days of tuition. This model will be piloted on the Family programme from January 2012.

In addition, BPP has undertaken its own extensive review and proposes the following, further improvements:

1. Optional Saturday course dates for both days 1 & 2
2. Rebalancing days 1 & 2 to further enhance the practical, forensic parts
3. **Delivery at the current rate of £340 + vat for the next 3 years**

There appears to be no issue that the FAC provides appropriate practical guidance in the use of financial information and accounts; that the FAC was pitched at roughly the right level and was of a suitable duration; and the course is delivered at the right time in a barrister’s career. The balance to be struck between content and length of course was thought to be right [186]

1. **Exclusive provider status**

Outside the scope of this consultation but nonetheless alluded to by the working party [188] is the issue of whether the BSB should continue to allow the course to be run by a single provider.

In due course, BPP would welcome an opportunity to contribute in more detail to this debate. However, in the interim, we would invite the BSB to consider the following issues:

* BPP provides two days of high quality professional training for £340. The delegate numbers are approximately 500 p.a. It is this volume of business which enables the course to be offered at the current price. The true commercial price would be nearer £450/£500 if that volume of delegates could not be assured.
* In addition, we have secured the expertise of our exclusive partners, BDO LLP to provide an empirical, specialist forensic accountancy input. The practical value of this course would be greatly diminished without such expert input.
* If the BSB were to move to multiple providers, it is inevitable that without a guarantee of a high volume of business which sole provider status enable and even allowing for competition between providers, the price per delegate would have to increase to represent a more realistic commercial cost for delivery.
* If the price per delegate did not increase, it is submitted that whatever representations are made by other would be entrants to the market, the quality of the course, the presenters and the materials would inevitably diminish.
* Additionally, in previous feedback, a number of delegates identified a lack of course content to assist them with their personal tax affairs. Whilst this is not (and never was) a learning objective for this course, nonetheless BPP, via our Business School, is able to add significant additional value by the provision of a free, ½ day personal tax seminar (online or face to face) to any delegate attending the FAC.
* In short, BPP can provide this important course at a vastly discounted rate, using high quality teaching materials and expert tutors with industry experience; added to which we alone have 4 years of direct experience of working with pupils and new practitioners on the FAC course; experience which no other provider is now able to match.

1. **Conclusion**

* BPP is proud of its relationship with the BSB and the fact that the working party found overall, high levels of satisfaction with the course.
* Unsurprisingly, we endorse recommendation 28; namely that the course should be retained substantially in its present form.
* The minor changes recommended are now in place together with additional, unsolicited improvements as described.
* We would urge strongly against the removal of exclusive provider status for the reasons given.

**From: Alanna Linn**

Sent: 24 October 2011 14:30

To: Consultation

Subject: Response from the Legal Services Consumer Panel

Attachments: 20111024\_BSB\_CPDReview.pdf

Dear Ms Shrimplin

Please find the Panel’s response to the BSB’s consultation on CPD. We will also be publishing our response on our website.

Thanks

Kind regards

Alanna

Alanna Linn I Consumer Panel Associate I Legal Services Consumer Panel

Dear Ms Shrimplin

**Review of Continuing Professional Development**

I am writing in response to the Bar Standards Board’s consultation on the proposed new system for Continuing Professional Development (CPD).

CPD can be an useful regulatory tool for helping to ensure legal professionals remain competent once qualified. The Panel’s research shows that consumers assume that regulators are checking that professionals are competent, and support compulsory CPD as part of a quality assurance process.

The main thrust of the proposals is greater flexibility for the profession, alongside an increase in CPD hours and improved record keeping. However, although the number of required hours has been increased, the simultaneous removal of the need to undertake ‘accredited hours’ and the widening of permitted activities, makes it unclear whether it will be the actual activities undertaken by professionals that change, or only how they are reported. That is, it is not clear from the review that the changes in hourly requirements and content will necessarily deliver more competent professionals for consumers than exist at present. We would expect at least some CPD to involve client-related activities.

The most significant reform relates to reporting and monitoring, with the review proposing fewer, but more structured, checks on compliance. In many ways, the success of the other changes hinges on this process; the trust given to the profession to undertake and self-certify appropriate CPD must be backed-up by a genuine risk of sanction if it is abused. The Panel supports the reporting and checking changes on the basis that it is expected to provide more rigorous oversight of CPD compliance than occurs at present. However, to make this system effective, the Panel encourages the BSB to undertake both random and targeted, risk-based checks. The latter could focus on, for example, barristers who have been subject to competence-related complaints or barristers who practise in areas where consumers face significant risk of detriment if professionals are incompetent, or insufficiently up to date. The focus of compliance activity should be on improving the outcomes for clients, as set out in the

4-point purpose of CPD. This requires a qualitative assessment rather than a tick-box approach.

The Panel notes that the new CPD arrangements maintain the requirement that CPD activities are relevant to a professional’s practice area, or proposed practice area. The keeping of this linkage is welcome; however it is unclear whether, to date, it has been subject to scrutiny. The Panel hopes the BSB will, again as part of its new compliance approach, look to verify not only hours and types of CPD activities, but how the activities undertaken are relevant to a professional’s practise area. Such an approach would give greater teeth to the linkage requirement, and help ensure that consumer expectations about regulator checks are met.

Finally, the Panel has previously identified the need for diverse mechanisms to ensure the ongoing competence of legal professionals, The BSB’s review of CPD has focused on CPD-alone, rather wider mechanisms for ensuring the ongoing competence of barristers. It is therefore essential that the proposed reforms are implemented in the context of the legal education and training review currently underway. There needs to be open and flexible process in place that will ensure new CPD processes can be modified in line with any subsequent review findings and recommendations. The BSB must not restrict the Review’s ability to explore further changes to barrister CPD.

Yours sincerely,

Elisabeth Davies

Chair

**From: Peter Hilling**

Sent: 25 October 2011 11:46

To: Consultation

Cc: Subject: Advocacy Training Council Response

Attachments: Response of the Advocacy Training Council to the CPD Consultation.odt

Please find attached the ATC’s response to the consultation.

Peter Hilling

ATC Interim Director

289-293 High Holborn

London WC1V 7HZ

020 7611 1458 / 0743 272 4732

(Tues – Thurs)

**From: Julia Hornor**

Sent: 25 October 2011 15:48

To: Consultation

Subject: CPD Consultation: Blackstone Chambers consultation response

Attachments: Response to CPD Consultation paper Oct 11.pdf

Dear Sirs,

I attach a pdf of the Response drafted on behalf of Blackstone Chambers to the CPD Consultation paper. I would be grateful if you could acknowledge safe receipt.

Thank you.

Yours,

Julia Hornor

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**BLACKSTONE CHAMBERS**

**RESPONSE TO BSB CONSULTATION PAPER**

**PROPOSED NEW SYSTEM FOR CPD**

Q1. *Do you think that the fundamental approach to CPD requirements should*

*continue to be based on a system defined by the number of hours of CPD*

*undertaken annually?*

Yes.

Q2. *Do you agree with the proposed new approach for CPD that will, as a single*

*but five fold strategy (1) increase the range of approved CPD activities; (2)*

*increase the number of CPD hours per annum; (3) raise the standard of*

*record-keeping; (4) simplify the system of reporting, and (5) simplify*

*enforcement of the CPD Regulations?*

No.

We agree with, and welcome, the proposed removal of the system of accreditation of

CPD course providers and with it the requirement that a specified number of hours be

spent undertaking "accredited" activities, and the proposed increase in the range of

approved CPD activities. We strongly disagree with the proposed increase in required

hours from 12 to 24 and the proposed requirement that at least 12 of the 24 hours

should be spent undertaking so-called "verifiable" activities (see answers to questions

3 and 8 below). We do not consider there to be anything wrong with the existing

system of record-keeping or the standard of the records kept by barristers.

Q3. *Do you agree that with the more flexible definition of CPD (Report paragraph*

*117) the required number of hours should be increased from 12 to 24 hours*

*per annum?*

No.

2

Whilst there may be sufficient basis, and support in some quarters, for a small

increase from 12 hours (although this is not in any way apparent from the Report of

the Working Group and for our part, we do not believe it to be necessary), Blackstone

Chambers does not understand why the number of annual CPD hours required should

be doubled. No reason is given in paragraph 119 of the Report for the stated

conclusions that 12 hours, "*are [not] now enough*" and that "*an advance from 12*

*hours to 24 is now... appropriate*", and no evidence is set out or referred to in order to

justify this view. We note that the Working Group "*suspects*" that the public will not

think 12 hours are enough without citing any supporting evidence. This is an

insufficient foundation for the imposition upon barristers of new and more onerous

training requirements.

The proposal to require 24 hours is inconsistent with the Working Party's own view

(paragraph 174 of the Report) that the present quota for New Practitioners of 9 plus 3

hours of compulsory courses is sufficient.1 No explanation is given for the underlying

premise that Established Practitioners (many of whom will have very considerable

experience and high quality practices) require twice as much annual training as new

recruits to the profession. This is a nonsensical outcome.

A requirement to satisfy 24 hours (12 of which have to be "verifiable") would place

upon barristers in England and Wales a significantly more onerous CPD obligation

than is placed upon other members of the UK and Irish legal professions2. No

explanation is given for distinguishing the Bar of England and Wales in this regard.

To the extent that the Working Group may perhaps have been unduly influenced by

the higher CPD requirements of the medical professions, this is to lose sight of the

fact of the differences (acknowledged at paragraph 64 of the Report) between the

nature of the legal and medical professions and of the fact that a significant part of

many a barrister's daily practice is already of an academic/research nature.

1 It is only proposed to increase the NPP requirement to 24 hours a year to bring it into line with the

proposed requirement for the EPP.

2 Solicitors: 16 hours (only 4 of which have to be accredited), Irish Bar: 10 hours (no accreditation required),

Scottish Bar: 10 hours (all accredited), Solicitors in Scotland: 20 hours (but with no accreditation required).

3

The potential substantial added value of the more flexible definition of CPD (the most

significant effect of which is to bring private study into the sphere of qualifying CPD

activity) is undermined at a stroke by the imposition of a requirement that half of the

required hours should be "verifiable", when private study (acknowledged to be one of

the most fruitful CPD activities (Report paragraph 94)) will "*count as*" a "nonverifiable"

activity. This means that barristers will have to undertake an increased

amount of what is currently accredited activity (from 4 hours to 12 hours) (where

there is less flexibility) AND an additional 12 hours of similar activity or private

study.

Thus, and crucially, we consider that the lack of flexibility imported by the

requirement that 12 hours should be spent undertaking what the BSB counts as

"verifiable" activity (as well as 12 hours "non-verifiable" activity) would significantly

increase the disproportionately negative impact of the proposed new CPD system

upon those on maternity leave or with caring responsibilities (often, but not

exclusively, women). It is already harder for those on maternity leave, or working

part-time with small children at home, to satisfy the required hours of CPD a year

than it is for barristers without such additional responsibilities. The free, most easily

accessible, and often higher quality, CPD lectures are those run by the Inns of Court

and the specialist Bar Associations. For understandable practical reasons, these are

usually run between 5pm and 7pm. This is the time of day when it is most difficult

for those with caring responsibilities to be absent from home at work. Other courses

are run during the day but at often significant expense which is prohibitive for those

on low incomes, in particular those working part-time, or on maternity leave. The

substantial increase in the hours and the requirement that 12 hours be "verifiable" will

exacerbate an existing problem. This is, in our view, the most objectionable aspect of

the new system. The Equality Impact Assessment annexed to the Working Party

Report asserts that the increased flexibility in the new system will counterbalance the

disproportionate negative impact upon those with limited income and time. We

disagree and believe that greater consideration should be given to how to minimise

the negative impact on this sector of the profession. For example, the flexibility to

carry out all or the majority of the annual hours required by private study (of which

the barrister would have to keep such records and notes that would stand up to

4

scrutiny if sampled for monitoring purposes) would be a very significant

improvement.

Q4. *Do you think that (if more hours are required) acceptable activities should*

*include private study, relevant professional and personal skills, and a wider*

*range of training activities than is currently accepted?*

Yes. Furthermore, Blackstone Chambers considers that private study should be

accepted even if the number of CPD hours required is not increased. The Working

Group acknowledges (paragraph 94) that private study and learning in the workplace

are the most fruitful CPD activities and that they have previously been excluded as

acceptable activities for the wrong reasons (paragraphs 96 to 97).

Q5. *Do you agree that there should be no compulsory CPD topics for established*

*practitioners, but that a balance of activities must be undertaken?*

Yes.

Q6. *Do you consider that the current system of applying for extensions of time*

*should be continued?*

Yes.

Q7. *Do you agree that there should be no waivers of CPD requirements for*

*barristers who wish to retain their practising certificates?*

Yes, provided that the greatest degree of flexibility possible is afforded to individual

barristers as to how they fulfil the annual CPD requirement (see answer to question 3

above).

8. *Has the system of accreditation of CPD providers and courses by the BSB*

*outlived its usefulness, indicating that it should be replaced by the proposed*

5

*system of barristers recording their own "verifiable" and "non-verifiable"*

*activities?*

Blackstone Chambers agrees that the distinction between "accredited" and

"unaccredited" activities has outlived its usefulness and that "*accreditation [...] has*

*turned out to be a superfluity, and the requirement of accredited hours can at times be*

*a distraction or a nuisance*" (Report paragraph 136). Chambers therefore agrees that

the system of accreditation of CPD providers and courses should be abolished (and

with it, the requirement for a certain proportion of the CPD hours to be accredited

hours), particularly since the current process of accreditation is admitted to involve no

element of quality control.

Blackstone Chambers agrees that instead barristers should be required to record their

own CPD activity and to keep documentary proof of any of the activity which is

verifiable.

However, we do not consider that a requirement should be imposed that a certain core

of the required hours (the proposal is 12 out of 24) should be "verifiable" activity.

(1) This would re-introduce to the proposed new, "more flexible" system, one of

the worst aspects of the current system, namely the rigidity and distraction of the

requirement to obtain a certain core number of a certain type (ie accredited) hours

whatever the quality, and value to the individual, of the activity. The proposed

requirement is inconsistent with the Working Group's own stated aim (paragraph 82

Report) that the range of stated activities permitted and available should be as flexible

as possible and with its own view (paragraph 92 Report) that "*any activity on the part*

*of an individual practitioner which serves the purposes which we have identified*

*should qualify for CPD*".

(2) Moreover, it seems to us that since the point of such a requirement can only be

to discourage and counter "CPD fraud", the requirement is at odds with the Working

Group's own view that the Bar should place more trust in the integrity of its

practitioners and allow them greater scope in selecting the CPD programme which is

right for them (paragraph 95 Report).

6

(3) No other professional CPD model (out of those considered by the Working

Party) requires half of the required hours to be accredited or verified. Of the other

professions considered by the Working Group, the only other profession to require

verification of a specified number of hours (the General Dental Council) required

verification of only 1/3rd of the overall total requirement.

(4) We do not consider that it is necessary (or even possible) to state in advance

what CPD activity "*counts as*" "verifiable" and what does not. Either an activity can

be verified by documentary proof kept by the barrister (such as, for example in the

case of private study, written reference/revision notes of the research undertaken) or

it cannot. Moreover, the proposal to proscribe what counts as verifiable and what does

not is inconsistent with the view of the Working Group (Report paragraph 140) that

barristers are capable of deciding for themselves what proof they should keep. If they

have, what they judge to be, adequate documentary proof that an activity was

undertaken, it is verifiable; if they do not, it is not.

9. *Would a new system based on a barrister's Declaration on application for the*

*renewal of the practising certificate, together with retention by the barrister of*

*a Portfolio recording CPD activities (for monitoring and sampling purposes)*

*be an effective means of ensuring CPD compliance?*

Yes.

10 *Should the New Practitioners' Programme be retained substantially in its*

*present form but based on an annual return as opposed to over a three year*

*period?*

The effect of the proposed changes is that there would in fact no longer be any

practical distinction between the New Practitioners Programme and the Established

Practitioners Programme, save for a requirement that a certain amount of advocacy

and ethics must be undertaken. This in itself calls into question the proposed

requirement that Established Practitioners should carry out 24 hours a year.

7

The proposal to remove the current flexibility which allows the total hours required of

New Practitioners to be fulfilled in 3 years causes concern. It is considered important

that very junior practitioners should have flexibility as to when they complete the

demands of the NPP. Some, for example, may wish to go on the Keble course

(generally recognised as excellent advocacy training) but not be able to afford it in

their first year. Many of the more concentrated CPD sessions are quite expensive,

thus struggling junior barristers would be pushed towards the (less convenient) early

evening, single hour CPD events. Some juniors might be undertaking third sixes or

secondments, which would add to the time and cost pressure in the first year.

11. *Should the Forensic Accounting Course be retained substantially in its present*

*form (but with some improvements to content and delivery)?*

Yes.

12. *Do you have any other comments on any of the recommendations or the*

*proposed new system as detailed in Chapter XVI of the Report or in the draft*

*Handbook?*

We object to the recommendation 11 that barristers who suspend their practising

certificate should have to “catch-up” on CPD “as necessary” when applying for the

re-issue of the practising certificate upon return to work. This will primarily impact

upon barristers returning from maternity leave and will place an unfairly onerous

burden on new mothers returning to work when income and time are both in short

supply. It will also inevitably lead to the perception that returning mothers are being

required to demonstrate fitness to practice and place a further obstacle in the way of

working mothers remaining at the Bar. If a barrister suspends her practising certificate

while on maternity leave, she should be reissued with her practising certificate as a

matter of course when she returns, and welcomed back to the profession with open

arms However, as this is not the focus of a particular consultation question, it is

unclear whether this particular recommendation is being considered for

implementation by the BSB. If it is, the proposal – which would be a dramatic change

in approach to the detriment of returning mothers – should be brought explicitly to the

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attention of the wider profession in the form of a further consultation before being

implemented. At the very least, if this proposal is pursued, it should be done in a way

which minimises the inevitable inconvenience it will cause: rather than requiring a

returning mother to go through an ill-defined process of negotiating a time-frame

within which she must “catch-up” on “missing” CPD, she should be automatically

granted an extension of time to fulfil the “missing” CPD hours as and when she can

upon her return to Chambers.

It is obviously of paramount importance to the profession as a whole that women are

not deterred from remaining at the Bar after having had a family. If that leads to

barristers on maternity leave being treated as a special case for the purposes of CPD

requirements (whether by being afforded more flexibility as to how the hours are

achieved, or extensions of time upon return to practice) so be it.

BLACKSTONE CHAMBERS

OCTOBER 2011

Chambers Director

Blackstone Chambers

**From: David Hills**

Sent: 26 October 2011 11:30

To: Consultation

Cc: Catherine Quinn; Tony Faith; Subtreasurer; Joanna Robinson; Bernard Livesey QC; Saggerson, HHJ

Subject: Lincoln's Inn Response

Attachments: CPD Consultation 25 Oct 11.doc

Please find attached the final version of Lincoln’s Inn’s response to the Bar Standards Board Continuing Professional Development Consultation.

For Under/Sub Treasurers: there is a further amendment to our answer to Q.10

David Hills

Under Treasurer

**RESPONSE OF LINCOLN’S INN TO PROPOSALS TO INTRODUCE NEW CPD REQUIREMENTS**

**Introduction.**

This paper has been put together by the Bar Representation Committee of Lincoln’s Inn which consists of over 40 members of the Bar from all areas of practice and all ranges of call and seniority. In addition the Education Committee has reviewed the response and the Continuing Education Executive Committee have contributed.

**Overview**

The Committee is entirely sympathetic to the purposes of CPD and recognises that the present system is capable of improvement. In general the Committee welcomes the overall relaxation of what may amount to CPD and the more flexible approach recommended in paragraph 81 of the Report but has serious misgivings about the proposal to double the number of hours. The Committee is of the view that no significant change in the overall burden of CPD should be brought about (particularly without the overwhelming consent of the profession) in circumstances where:-

1. in the course of the review, two surveys of the Bar were carried out in 2010, the results of which suggest that 81.9% of the Bar considered the current system fit for purpose and 80.1% agreed with the number of hours required;
2. there is no suggestion in the Report that 12 hours’ CPD is insufficient to keep barristers up to date with new knowledge and techniques relevant to their field of practice. Nor is there any evidence that the public consider that the present 12 hours is inadequate. The comment at paragraph 119 that “we suspect that the public will not think that 12 hours are enough” appears to be something of an aside, wholly unsupported by any actual research and does not provide a justifiable foundation for change;
3. a system of quality assurance is to be introduced to certain sections of the Bar in early 2012. Although we agree with the opinion expressed in paragraph 72 that quality assurance and CPD should not be confused, we see no reason why one should not inform the other, particularly with regard to the number of hours’ CPD which may be appropriate. For that reason we consider that the present recommendation to double the number of hours of CPD is, at least, premature.
4. it is acknowledged at paragraph 64 of the Report that there are significant differences between the working environment and methods of the medical profession and those of the legal profession. It is the case (for example) that 30% of doctors are trained overseas. It should be recognised that the Bar is essentially competitive and that a barrister who fails to demonstrate a complete mastery of his subject is unlikely to survive very long. To this extent the profession is self-regulating. Of the other professions which have adopted a form of CPD, the nearest equivalent to the Bar (and with which it is competing on many fronts) is that of solicitors, for whom 16 hours’ CPD is considered appropriate. (In Scotland The Faculty of Advocates requires 10 hours and the Law Society of Scotland requires 20 hours. No other legal regulator requires 24 hours.)
5. the suggestion (at paragraph 119 of the Report) that the changes would give barristers good reason to take CPD more seriously is premised on the erroneous assumption that barristers do not take the present system seriously. No evidence is forthcoming to support such a suggestion, which does not accord with the Committee members’ experience personally or from colleagues generally.
6. the proposal of the working group is that 12 hours of the 24 be verified by some form of documentary proof. As is recognised in paragraph 144 of the Report, this in reality will mean attending collegiate events. The effect is a trebling of the present 4 hours of such activities and, of itself, will impose a significant further burden on barristers, especially those who do not practise in the immediate vicinity of the Inns of Court and the obvious focus of such collegiate events, which are often provided without charge.
7. the term “collegiate ethos” is used repeatedly throughout the report and may be indicative of the London centric composition of the Working Party. That ethos is not described or the theory developed. Indeed, it is unclear to what extent consideration has been given to the impact that these proposals may have on practitioners’ ability to acquire verified CPD points where they are based outside London and, in particular, outside the main regional centres.

OUR RESPONSE TO THE CONSULTATION QUESTIONS.

Q1. **Do you think that the fundamental approach to CPD requirements should continue to be based on a system defined by the number of hours of CPD undertaken annually?**

**A** Yes.

Q2**. Do you agree with the proposed new approach for CPD that will, as a single but five fold strategy (1) increase the range of approved CPD activities;(2) increase the number of CPD hours per annum;(3) raise the standard of record keeping; (4) simplify the system of reporting, and (5) simplify enforcement of the CPD regulations?**

A. As noted above we welcome the proposal that the range of proposed CPD activities be increased but do not agree that that increase is itself a justification for the increase in the number of required hours as seems to be the import of Question 3 (below). We see neither justification for the increased obligations with regard to record keeping nor any inherent deficiencies with the current system. We do not agree that the proposed system of reporting is a simplification (see Response 12). Nor do we agree that the proposed change in enforcement procedures can properly be described as a simplification. For the reasons expressed in Response 9, we strongly oppose the changes.

**Q3 Do you agree that with the more flexible definition of CPD the required number of hours should be increased from 12-24 hours per annum?**

**A.** No. We are of the view that such an increase is inappropriate. See our comments above.

**Q4. Do you think that (if more hours of CPD are required) acceptable activities should include private study, relevant professional and personal skills, and a wider range of training activities than is currently accepted?**

A. Yes.

**Q5. Do you agree that there should be no compulsory CPD topics for established practitioners?**

A. Yes, but CPD which a practitioner is required to undertake should not be mandated in this way. The Working Group’s proposals are vague and imprecise. The latter is objectionable both *per se* but especially where what is in issue is a matter of professional conduct.

**Q6. Do you consider that the present system for applying for extensions of time should be continued? (paragraph 127)**

1. Yes.

**Q7. Do you agree that there should be no waiver of CPD requirements for barristers who wish to retain their practising certificates?**

1. No. We agree that there should be no waiver on the grounds of seniority or special eminence but do not agree that a blanket approach to this question is appropriate.The Working Group considered that the granting of a waiver to the mother of a new born child “loses sight of the purpose of CPD which is to improve the quality of service which a barrister delivers to the client.” (paragraph 130). We have already commented on the lack of any objective evidence that CPD in fact improves the quality of service. While we agree that maternity should not in itself be a reason for waiver, where it is clear that the barrister will not be providing legal services for a given period either for reasons of maternity or serious ill-health, we see no reason why consideration should not be given to a waiver and to preclude the jurisdiction may have impacts upon the Bar’s ability to maintain equality and diversity in individual cases. We agree that a barrister should be required to ‘catch up’ with CPD on return to work (insofar as the same is not the subject of a waiver) but consider that the period for ‘catch-up’ should be reflective of all the circumstances.

**Q8. Has the system of accreditation of CPD providers and courses by the BSB outlived its usefulness indicating it should be replaced by the proposed system of barristers recording their own verifiable and non verifiable activities?**

1. Yes.

**Q9. Would a new system based on a barristers Declaration on application for the renewal of a practising certificate ,together with retention by the barrister of a portfolio recording CPD activities(for monitoring and sampling purposes)be an effective means of ensuring CPD compliance?**

1. No. We are strongly opposed to this suggestion. Bearing in mind the lack of any objective evidence that CPD has any bearing on the ability of the barrister to do his job (as accepted in paragraph 73 of the Report), we consider that such regulatory control as is required should be administered proportionately (as it is at present) and that to link the issue of an individual’s Practising Certificate to the completion of the required number of hours of CPD to be disproportionate and wrong in principle. We do not agree that it is surprising that no attempt at linkage has been made in the past (paragraph 150 of the Report). A refusal to issue a Practising Certificate should be limited only to those cases where the barrister is shown to be unfit to practise. **Indeed, we would go so far as to say that there could never be any circumstance where a failure to comply with the CPD requirements could, of itself, justify the jurisdiction to refuse a practising certificate**. As is noted in paragraph 154 of the Report, continuing to practise without a certificate may result in the barrister committing a criminal offence.

By way of illustration, suppose a barrister is mid-trial on 31 March in a particular year and fails to make the necessary return? Is the trial to be adjourned (and if so, for how long and at what cost) or a potential offence committed? What if the trial were a 4-month VAT fraud, part-heard? The lack of proportionality between the barrister’s failing and the proposed sanction (and its consequences) is self-evident.

We accept that, as at present, where a barrister fails to complete CPD, a financial penalty may be appropriate together with a requirement for remediation. We fail to understand why the present system is described as clumsy and over-elaborate (paragraph 150).

**Q10. Should the New Practitioners Programme be retained substantially in its present form but based on an annual return as opposed to over a three year period?**

1. Yes save for the following exception. A barrister undertaking the NPP should be entitled to count some courses towards the 3 year aggregate of the required CPD.  One example is the Keble advanced advocacy course. It is recognised as a pre-eminent course and attracts 36 hours CPD of which 9 hours is advocacy and 3 hours ethics.

**Q11. Should the Forensic Accounting Course be retained substantially in its present form (but with some improvements to content and delivery?**

1. No. We are in agreement that in principle a forensic accounting course is desirable but do not agree that it should be retained in its present form. It is the experience of members of this Committee that the current course is expensive and poorly delivered. If it is to be retained, the supply of the course should be opened up to other providers or (preferably) made part of the BPTC course.

**Q12. Do you have any other comments on any of the recommendations or the proposed new system as detailed in Chapter XVI of the Report or in the draft handbook?**

A: Yes. We consider that the proposed mechanics for verification are burdensome and unsuitable and will lead simply to unnecessary paperwork. Not all seminars generate paperwork only for those who attend. Many are free, with the materials posted on the internet immediately thereafter. We support the continuation of the practice of ‘signing in’ as the procedure for verification of attendance to the exclusion of and in substitution for the proposed requirement for the retention of the additional paperwork. We are also doubtful that requiring established practitioners to embark on the required reflection and self-evaluation can or will serve any useful purpose other than to require formulaic answers merely to satisfy the requirements of the system.

Ian Clarke

Michael Cousins

Keith Rowley QC

25 October 2011

**From: Catherine Quinn**

Sent: 26 October 2011 14:05

To: Consultation

Cc: Tony Faith; Subtreasurer; Christa Richmond; 'Dawn Oliver'; 'David Hills'; Valerie Shrimplin; 'Rachel O'Driscoll'

Subject: Middle Temple response to CPD Consultation

Attachments: CPD consultation response from Middle Temple [261011].doc

Please find attached Middle Temple’s response to the Bar Standards Board’s consultation document on Continuing Professional Development.

Please note that our response is general and in favour of the review report’s recommendations, with a modest number of detailed comments, rather than specific to each of the individual consultation questions.

Catherine Quinn

Under Treasurer

The Honourable Society of the Middle Temple

Treasury Office, Middle Temple Lane

**Response from Middle Temple to the Bar Standards Board’s**

**Review of Continuing Professional Development**

1. The Report of the Working Party is based on extensive research, well reasoned and clearly expressed. The Working Party deserves congratulations and the thanks of the profession.
2. The current CPD requirement is for 12 hours p.a., 4 of which must be “accredited”. However, in the view of the Working Party, an average of one hour a month is not enough. It further notes that there is no qualitative assessment even of accredited courses, that the list of qualifying activities is excessively knowledge-based and over-influenced by the need to police the profession, and that it excludes valuable methods of developing skills. The method of enforcement is at once cumbersome – checking barristers’ annual returns takes the BSB two to three months a year – and defective, in that there is no linkage between compliance with CPD requirements and entitlement to a practising certificate.
3. In our view these criticisms are valid.
4. The Working Party accepts that no scheme for CPD can meet all criticisms or be fool-proof. We agree. The question, therefore, is whether the scheme set out in the Report addresses perceived defects in the present scheme reasonably, and suggests improvements which are appropriate.
5. A significant proposal is that the range of acceptable CPD activities should be increased. This is done by offering a general definition of CPD in the following terms:

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

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

Table 6, at paragraph 112 of the report, sets out a list of “ACTIVITIES WHICH SHOULD COUNT” which, importantly, is non-exhaustive. Table 7, at paragraph 115, sets out a list of “ACTIVITIES WHICH SHOULD NOT COUNT”. No topics should be compulsory.

1. Our only comments on these lists are as follows.

* It must be emphasised that “professional courses” need not have a legal subject matter. For example, lectures on accountancy or medicine may be relevant.
* “Teaching students below the level of an undergraduate degree” is said not to count. Presumably this precludes teaching below undergraduate level rather than precluding teaching university students who have not yet graduated. The ambiguity should be resolved by adding the word “course” after the word “degree”.
* The disqualification of “running a personal website, blog, legal commentary or diary” should be reconsidered. What matters is not the medium but the content. Preparing a blog may be as demanding and valuable as research which is not electronically recorded. In particular, a chambers website with a legal content should surely count.

1. Importantly, at paragraphs 72, 154 and 177-179 the Working Party emphasises that “CPD is not to be confused with quality assurance”. We agree. Indeed, the Dutton 2004 Report expressly states at paragraph 3.4

*“Those teaching advocacy for the Inns and Circuits should not be conducting formal assessments.”*

1. The monitoring and enforcement procedures proposed make for a system which should be less bureaucratic and more effective.

* There will be annual online declarations of compliance.
* 12 of the 24 annual hours must be verifiable by some form of documentary proof
* Practitioners must, for three years following the relevant calendar, year keep a record of CPD activities undertaken in the form of an abbreviated but reflective “learning journal”.
* Persistent non-compliance with the CPD requirements will empower the PCC to suspend or impose conditions on the practising certificate.

1. **Our conclusion is that, subject to the minor points set out in 6 above, the report gains our full approval.** We anticipate that some may cavil the doubling of the required hours, but in our view this is balanced by the increased flexibility and expanded relevance of their content. Nevertheless, we would be concerned if that increase was a step towards further increases. 24 hours, in our view, is enough.
2. For the profession, the important and useful documents will be the “Handbook for Continuing Professional Development”, a draft of which appears at Appendix B of the Report, and its summary “Continuing Professional Development at a Glance”. We comment on these in turn.
3. **The Draft Handbook**

Our comments fall into two categories. First, with some diffidence we make drafting suggestions, some of which indicate ways in which the handbook, if desired, could be shortened: we are only too conscious of the difficulty in getting barristers to read regulatory material. Second, we comment on “Appendix C: New Practitioners Programme.”

1. First, some drafting suggestions.

* The introduction does not really need to go into the history of the regime.
* The thrust of paragraph 1.1 is set out at paragraph 1.2. If paragraph 1.2 appeared first, as paragraph 1.1, one could omit the first ten lines of the present paragraph 1.1.
* We have to say that we find the language of the present paragraph 202 (b) of the Code of Conduct, set out at paragraph 1.4, confusing. On a plain reading, it seems to imply that one cannot practise unless one is up-to-date with CPD. But this is apparently not so: see paragraph 150 of the Report. Therefore, care must be taken to make sure that the new Code is clear on this point. (This confusion is perpetuated in the second sentence of paragraph 1.5 of the draft handbook.)
* Paragraph 1.6: This deals with the requirements for Call and qualification for practice and is therefore not relevant for CPD.
* Paragraph 1.7: The Equality and Diversity Code is only relevant to CPD in that equality and diversity training can count as CPD: see the Report at paragraph 112. If it is to be referred to in the draft handbook, it will therefore come better after the list of “activities which should count”.
* Paragraphs 2.4 and 2.5: These set out activities respectively described as “verifiable hours” and “non-verifiable hours”. It should be emphasised that all these activities, whether verifiable or not, are really “activities which should count” within the meaning of paragraph 112 and Schedule 6 of the Report. We suggest that the headings should be changed to “verifiable activities which should count as CPD” and “non-verifiable activities which should count as CPD”. See also paragraph 6 above for suggestions about clarifying some of the descriptions of activities.

1. **Appendix C New Practitioners Programme**

We offer the following comments on the section on advocacy.

* The second paragraph states that the Hampel method should be used “for as much of this part of the teaching as possible”. This method, in its most structured form, is not always the best method of addressing problems which come up on NPP courses. Advanced training is one of the topics currently being debated in the ATC. We query the wisdom of the BSB laying down guidance on training techniques in a document which describes the CPD regime.
* The third paragraph of the section on advocacy refers to assessment on the advocacy course. However, that course, as part of the CPD programme, should not be subject to formal assessment: see paragraph 7 above.
* A list of ethics topics is useful, but it will be impossible to deliver exercises and permit worthwhile discussion on all these topics in a period of only three hours. This should be made clear. Experience shows that it is better to encourage detailed and reflective approach to some issues rather than try to cover everything at a gallop and end up doing so only superficially.

1. **CPD at a Glance**

It is to this summary, rather than a handbook, that practitioners will most frequently refer. It will therefore be particularly important that the first paragraph does not, as at present, assert or imply that failure to comply with CPD requirements automatically suspends the right of a barrister to practise.

* It will be helpful to point out that the recommended forms of CPD declaration and portfolio are available on the BSB website and that completed portfolios must be retained for three years following the relevant calendar year.
* We note that this document lists “Activities which will count as verifiable” and “Activities which will count as non-verifiable”. We repeat our comments on paragraphs 2.4 and 2.5 of the draft handbook: see paragraph 12 above, last bullet point

1. We hope that our comments are construed as helpful rather than over-critical of the immense amount of work which has gone into improving the CPD regime.

**From: Lucy Reed**

Sent: 26 October 2011 16:39

To: Consultation

Subject: CPD Consultation Response

Dear Sir / Madam,

Please find below a link to my consultation response in respect of CPD, which I would be grateful if you would read and which I hope you find a useful contribution.

http://pinktape.co.uk/2011/10/cpd-consultation-response/ <http://pinktape.co.uk/2011/10/cpd-consultation-response/>

Yours Sincerely,

Lucy Reed

Lucy Reed

Barrister

The [Bar Standards Board Consultation on reform to CPD](http://www.barstandardsboard.org.uk/consultations/OpenConsultations/CPDconsultation/) for the Bar closes on Monday. I have posted about the proposals at some length before and I don’t propose to repeat all the contents of my last post. [The original post can be read here](http://pinktape.co.uk/2011/06/developments-in-continuing-professional-development/).

I am going to take [@adamwagner1′s](http://twitter.com/#!/AdamWagner1/statuses/127398672257392641) approach and publish my consultation in blog form, and refer the BSB to that. This then is my consultation response. I will deal with each of the Consultation Questions in turn.

**1 Do you think that the fundamental approach to CPD requirements should continue to be based on a system defined by the number of hours of CPD undertaken annually?** Yes.

**2 Do you agree with the proposed new approach for CPD that will, as a single but five-fold strategy (1) increase the range of approved CPD activities; (2) increase the number of CPD hours per annum; (3) raise the standard of record-keeping; (4) simplify the system of reporting, and (5) simplify enforcement of the CPD Regulations?** I agree with the five strategic aims. I disagree with some of the specific proposals that are intended to achieve those aims.

**3 Do you agree that with the more flexible definition of CPD (Report paragraph 117) the required number of hours should be increased from 12 to 24 hours per annum?** I agree that there should be an increase on the basis that the categories of activity which can be claimed as CPD are genuinely broadened. The suggested doubling of hours seems at the top end of what is likely to be appropriate.

**4 Do you think that (if more hours are required) acceptable activities should include private study, relevant professional and personal skills, and a wider range of training activities than is currently accepted?** Emphatically yes.

**5 Do you agree that there should be no compulsory CPD topics for established practitioners, but a balance of activities must be undertaken?** I agree that there should be no compulsory CPD topics for established practitioners, and furthermore I think that the question of the appropriate balance of activities is something that can only be assessed by individual practitioners, who are unlikely to undertake irrelevant CPD activities to a sufficient degree that it is likely to undermine the purposes of a CPD system which is otherwise robust. I do not think the issue of balance is capable of proportionate and effective regulation. I do think that for some areas of practice new practitioners should be required to undertake specific training if they have not had experience of that area as a pupil (such as my own area of practice family law where the practice and procedure in family proceeding is very different from in other fields and is not taught anywhere other than through observation in pupillage).

**6 Do you consider that the current system of applying for extensions of time should be continued?** I agree that there should be a system of application for extensions of time. A degree of flexibility would be welcome particularly for returning practitioners who have been on maternity or a period of illness. On my return from maternity leave I found it very difficult to make up my CPD hours as I was under pressure to earn money by attending court daily. It had not been appropriate to suspend my practising certificate in case I was required for urgent telephone advice on ongoing matters during my absence, and was therefore required to complete a full year’s CPD which I eventually had to complete online and with no .

**7 Do you agree that there should be no waivers of CPD requirements for barristers who wish to retain their practising certificates?** See my answer to 6 above. Whilst I acknowledge the importance of practitioners ensuring their continuing fitness to practice, it seems to me that where a barrister has been on maternity leave (or illness) for a short period of less than 6 months and she returns to work in the second half of a calendar year she ought to be able to apply for a modest reduction in the number of hours to be completed in the year of her return to work, or at least some rollover of the requirement to the next year. I think it unlikely that such a proposal would place clients at any material risk of their barrister being out of date, but it would ease return to practise.

**8 Has the system of accreditation of CPD providers and courses by the BSB outlived its usefulness, indicating that it should be replaced by the proposed system of barristers recording their own ‘verifiable’ and ‘non- verifiable’ activities?** I’m attracted by the idea of verifiable and non-verifiable activities. I think it is onerous to require barristers to retain documentary evidence of the activities for three years. I would expect any query about adequate completion of CPD to be raised within a couple of months of submission of my CPD record, or at any rate by the conclusion of the calendar year in which the records are submitted.

I have made some further comments below about activities which are not allowable.

**9 Would a new system based on a barrister’s *Declaration* on application for the renewal of the practising certificate, together with retention by the barrister of a *Portfolio* recording CPD activities (for monitoring and sampling purposes) be an effective means of ensuring CPD compliance?** Yes, although I am dubious as to whether the 5cm x 2cm box prescribed for “reflection” on the learning value of each activity is in fact likely to stimulate reflective learning or cure a tick box mentality. Similarly, I do not think that the overall reflection and self evaluation summary proposed will serve any purpose other than to irritate practitioners and potentially to discourage them from doing anything more than going through the motions.

I agree that the current system leads in many cases to a tick box approach, where practitioners can focus more on getting the requisite number of points than actually learning anything, but I do not think that any deep change of culture will be effected in this way. I think it is more likely to be achieved by a proper opening up of the categories of activity which can be counted towards the CPD total, allowing practitioners to form their own judgments based on their own unique practice and training needs.  Those who do approach CPD as a learning opportunity will reflect on their learning needs and outcomes regardless of whether or not there is a column in which they are asked to sum up that reflective process or not. Those who do not adopt that approach will simply write a meaningless one liner in the relevant box, grumble and carry on.

**10 Should the New Practitioners’ Programme be retained substantially in its present form but based on an annual return as opposed to over a three year period?** Yes.

**11 Should the Forensic Accounting Course be retained substantially in its present form (but with some improvements to content and delivery)?** Yes.

**12 Do you have any other comments on any of the recommendations or the proposed new system as detailed in Chapter XVI of the Report or in the draft Handbook?** Yes. Please see my previous blog post and the following comments (<http://pinktape.co.uk/2011/06/developments-in-continuing-professional-development/>).

Mediation training should count as a verifiable activity. I am unclear whether the authors of the report propose that such training should be disallowed. It seems to me that it is training in a skill which, like advocacy, is essential to day to day practice, whether or not one goes on to develop a business as a mediator per se.

I do not understand the logic behind the inclusion of “publishing a book or article” in the list of verifiable activities and the inclusion of “reading by way of private study law reports, statutes, legal journals or similar materials…” in the list of non verifiable hours, whilst the running of a blog or legal commentary is specifically stated as not allowable (2.6 draft handbook). It is unclear whether the reading of a legal commentary blog would fall within “similar materials” but I do not see why it should not. This should be clarified.

I agree that networking activities per se should not count as CPD. I do not think anybody would claim them. But many activities that are currently legitimate CPD activity such as the presenting of lectures involve some networking activity. Similarly, the operation of a website purely advertising legal services ought not to attract CPD, but this does not mean that the running of a legal commentary blog, or at least the writing of specific posts of substance ought to be excluded.

There are a number of lawyers who offer detailed and highly skilled commentary and analysis of specific cases and legal issues. That they publish this high quality material in an electronic form and disseminate it to the public at large does not detract from it’s educational value, either to reader or writer.

Some examples of high quality and highly educative legal writing which is published in an online format are listed below, and many practitioners consider these blogs essential regular reading in order to maintain the currency of their expertise:

**Human Rights:**

The UK Human Rights Blog regularly publishes detailed analyses of specific cases or particular issues arising. One Recent example is here: <http://ukhumanrightsblog.com/2011/10/14/another-cuts-challenge-fails-changes-to-housing-benefit-scheme-not-unlawful/>

**Supreme Court:**

The UK Supreme Court Blog regularly publishes detailed analyses of cases emerging from the Supreme Court. One recent example is here, by David Hart QC: <http://ukscblog.com/insurers’-human-right-not-to-pay-for-putting-asbestos-in-employees’-lungs>

**Housing:**

The Nearly Legal Blog regularly publishes detailed commentary and analysis in the field of housing law (<http://nearlylegal.co.uk/blog/>)

**General:**

Other examples of legal commentary can be found listed on the Guardian Legal Network (<http://www.guardian.co.uk/law/series/guardian-legal-network>)

Any person who wishes to claim CPD points for reading or writing material which is available exclusively online ought to retain a printed record of the material they wish to claim for as verification. If that is done I can see no valid objection to the inclusion of online material as a non-verifiable activity.

The report raises no argument as to any qualitative difference in material available electronically over material available in print and there has never been any attempt to audit the quality of legal writing that is the subject of CPD. If the BSB wishes to encourage truly reflective learning then the writing and reading of serious legal commentary, regardless of medium, ought to be encouraged not sniffed at.

I am sending this consultation response to the BSB in the expectation that the weight attached to it will not be affected by the medium of its delivery.

**From: Dermot Morrow**

Sent: 27 October 2011 16:13

To: Consultation

Cc: Simon Lofthouse QC; Caroline Braid; Patsy Cann; Sarah Baalham; Simon Cheetham

Attachments: CPD Response - BSB Complaints Committee - October 2011.doc

Please find attached the response from the Complaints Committee’s working group to the CPD consultation. I’d be grateful if you would confirm receipt in time for the deadline.

Kind regards,

Dermot Morrow

**Response of the Complaints Committee to the CPD Consultation Paper:**

Preliminary Observations

Barristers are under constant public scrutiny. Whether publicly or privately funded, they play a central role in the justice system. Their clients, whether they be the state funded bodies, corporate or the private individual have a right to know that a certain minimum standard of current legal knowledge including but not limited to the law, practice, policy, professional skills or advocacy has been attained and sustained

In order to maintain the confidence of the public they must have a rigorous and transparent professional standard which should be maintained by all. They have both a public and professional duty to ensure that those in practice have met the basic minimum qualifications and that their knowledge of the “law” is current and applicable to their areas of practice.

The CPD guide quite properly places significant emphasis on retaining public confidence and maintaining the highest standards. We indorse this approach and believe it will preserve the reputation for excellence of which the Bar is proud.

**Q1 Do you think that the fundamental approach to CPD requirements should**

**continue to be based on a system defined by the number of hours of**

**CPD undertaken annually?**

Yes.

A system based on hours of CPD completed annually has a number of advantages -

1. It is easily understood by the public, clients and barristers
2. It will not be too onerous a task for barristers to record their CPD
3. It is easily measurable so barristers and the regulator will know what barristers should be doing and whether they have/have not done enough hours
4. It is consistent with systems used in other professions
5. It is consistent with the basic principles that demonstrate whether any regulation is fit for purpose, as identified by the Better Regulation Task Force – it is proportionate, accountable, consistent, transparent and targeted
6. It is also a regime against which members of the public can easily check compliance.

**Q2 Do you agree with the proposed new approach for CPD that will, as a**

**single but five-fold strategy (1) increase the range of approved CPD**

**activities; (2) increase the number of CPD hours per annum; (3) raise the**

**standard of record-keeping; (4) simplify the system of reporting, and (5)**

**simplify enforcement of the CPD Regulations?**

For the proposed new approach for CPD to succeed, the first four criteria are likely to be essential. It would be counter-productive to increase the number of hours without increasing the range of CPD activities. It will also hopefully encourage publicly funded practitioners to broaden their practice. The cost of courses per se it is anticipated will be reduced– many of the courses are extremely expensive and a number not considered good value. The proposals will increase the competition in the market and ensure better value for money. It should be noted that there are however a significant number of excellent courses provided by the Inns, the Circuit and specialist Bar associations; a shift of emphasis from an externally approved and monitored programme to one where the individual takes responsibility for a balanced programme of activities will require better record-keeping and a simplified system of reporting.

We note that the recommendation is that the barrister annually declares compliance, rather than having the annual form checked for compliance. The monitoring process is replaced by an annual audit (the recommendation being 10%).

Currently CPD default is enforced by a process of warning letters and opportunities for the barrister to comply and/or provide mitigation, with disciplinary sanctions at the end of the process. The proposal is that, by linking CPD compliance with the issue of a practising certificate, enforcement is greatly simplified.

However, there will remain the issues of (a) whether or not there has been CPD compliance and (b) what sanction to apply. It is recommended in the Paper that in cases where there has been a failure to comply with the CPD requirements (as discovered during the audit), the matter should be taken up with the BSB’s Professional Conduct Committee. The fact of non-compliance will therefore need to be established.

The Complaints Committee’s experience reflects the difficulty in obtaining any or any adequate response from that very small minority of barristers who largely ignore the CPD rules. Necessarily, there will be warning letters and phone calls; there will be excuses and unfulfilled promises. That is unlikely to change under the new proposals and would remain a precursor to any sanction. Equally, the current process illustrates the importance of allowing practitioners to explain what are sometimes wholly extenuating circumstances.

Where the effective sanction is withdrawal of the practising certificate, the need for a fair process remains as important as before. Linking CPD compliance with the issue of a Practising Certificate may not simplify that process. Given that practising without a Practise Certificate may be a criminal offence, the linkage to CPD, if permissible, will potentially elevate the gravity and effect of any default. This may have the consequence that disciplinary proceedings could be more protracted with the potential for procedural and similar challenges given the potential consequence of a finding of misconduct. This could make matters more rather than less complicated.

**Q3 Do you agree that with the more flexible definition of CPD (Report**

**paragraph 117) the required number of hours should be increased from**

**12 to 24 hours per annum?**

Arriving at an ideal number is necessarily difficult. The practice in other professions, public expectations and the availability of activities are all relevant. However, it may be that the essential questions are how much CPD do barristers need and how much can they reasonably undertake?

Under the more flexible definition of CPD (as set out in paragraph 112), it is likely that many barristers are already undertaking more than 12 hours per year. Therefore, the increase is not only unlikely to be onerous for most practitioners, but will also reflect their own perception of their continuing professional training needs. The doubling of the CPD requirement to the equivalent of 2 hours per month may reflect more accurately both what barristers need and can reasonably manage.

An increase in hours will meet with some resistance, which is why the emphasis needs to be not only upon a more flexible range of activities, but also upon the individual undertaking a balanced programme of activities. For many practitioners, CPD requirements are met solely by attending courses, so doubling the number of hours spent on courses is probably unattractive to many. Shifting the emphasis to the individual recognising his or her own training needs is a necessary aspect of justifying the increase in hours.

One factor that is relevant to the number of CPD hours, particularly for more junior practitioners, is cost. For example, while some chambers pay for their junior members to attend the NPP (such as the South Eastern Circuit’s residential Keble College course), many do not. Some Chambers will have training events in chambers or by arrangement with firms of solicitors, others (often the smaller, less successful chambers) will not. Therefore the cost of CPD could well be a factor, particularly for those more junior practitioners who are in chambers that provide less assistance.

That factor does not justify retaining a lower number of hours, but it does support the need for a wider range of acceptable activities (which comes within Question 4).

**Q4 Do you think that (if more hours are required) acceptable activities**

**should include private study, relevant professional and personal skills,**

**and a wider range of training activities than is currently accepted?**

Yes – it can be difficult to undertake courses due to cost, appropriateness, location and timing. If hours are to be increased then it follows that course and hours should be easier to attain. We address this further under question 5 below.

One observation is that the cost of accreditation and the length of time to achieve it are off putting for course providers - particularly so when it comes to Law Society accreditation - If the number of hours are to be increased accreditation must become easier. We appreciate this may reduce the profit for the BSB in the inevitable drop in applicants for accreditation but that cannot be a major consideration.

We do consider there is a case for making accreditation cheaper and easier - There will be a significant increase in the people who apply to have their courses accredited if this happens. As the SRA accept BSB accredited course as equivalent to SRA approved courses it will encourage more solicitors to attend Barrister provided courses - an excellent marketing opportunity for the Bar. Gaining SRA accreditation is costly and takes a significant amount of time which is particularly off putting. Legal Practitioners are infinitely more interested in accredited courses and if the Bar can provide cheaper and better courses it can only be of benefit to the Bar generally.

The observations at para 137 – 138 are prudent; however, the benefit gained from accreditation for marketing purposes to solicitors is significant.

There is merit in removing accreditation altogether and the financial balance being regained by the proposal in relation to advertising fees.

Encouragement of practitioners to include private study will encourage them to keep abreast of the law which we consider is something they will probably be doing anyway.

This would also encourage practitioners to be aware of weaknesses in their practice that would benefit from further training, or refresher courses. If courses are easier to undertake, cheaper to participate in and the hours easier to complete then the likelihood is that practitioners will undertake the greater number of hours.

It is noteworthy that certain activities do not count. An obvious example is sitting as a recorder although we recognize there is attendant CPD for training. Another is a course on presentation skills - this skill is vital when it is considered that the role of the barrister is based nearly exclusively on their ability to present themselves whether it is in writing, in conference with the client or in court. Furthermore the range of areas that may be of benefit to the practitioner can be extremely broad - a Criminal barrister may want to attend a course of Forensic Analysis provided by medical practitioners to other medical practitioners, likewise a tax specialist may want to attend a course normally provided for accountants - permitting such courses to be recognized as capable of being CPD will encourage barristers to enhance their skill set and increase their marketability.

Consideration should be given to making Equality and Diversity training compulsory at some stage during practice. Indeed it is of note that the recent CPS grading application form required applicants to indicate what diversity training they had received.

**Q5 Do you agree that there should be no compulsory CPD topics for**

**established practitioners, but a balance of activities must be undertaken?**

Yes.

All practitioners who specialise in a particular area of work such as family law or criminal law will know what their training was like, the length of time since they completed their training and what their development needs are. They should all be working towards maintaining their professional knowledge, skills and expertise in their particular area. Members of the public will then have confidence that they will be provided with the high standard of service they can expect when they engage barristers in a specific piece of work.

Barristers will know that the Code of Conduct requires them to be competent with a professional approach and to deliver services with a high level of skills.

Undertaking a balance of activities will be in line with point 1 of the proposed five-fold strategy for CPD.

The question is whether the topics chosen will serve the purpose and enable practitioners to *give* *the public and clients confidence that they are skilled.*

Point 2 of the definition of CPD states that, practitioners should *keep up-to-date with new knowledge and skills.*

When practitioners are planning how their CPD hours will be achieved, they should ensure that the topics chosen are *relevant to their area of practice* (Para 92), cover a wide range and that there is *a reasonable balance between the different types of activities chosen* (Para 116). One would hope that practitioners will be aware of courses/CPD activities that are being organised at their Chambers, and can check the BSB’s website for other providers as well as for an indication of the topic areas and activities that are allowed. (Table 6)

(Para 113) suggests that the objectives of CPD can be achieved if (the BSB) gives *autonomy to barristers to make their own choices.*

Para 79 outlined a survey of doctors where the emphasis was on ‘active learning’ and (Para 80) *attuned to the different needs of individual practitioners.* Para 82 suggests that practitioners should *reflect on the choice of activities undertaken, record its benefits, quality and relevance.*

Some practitioners view the current system of CPD as prescriptive. It is hoped that if individuals are able to choose the topics that they need for their area of practice and bearing in mind that they can be autonomous, there should be less dissatisfaction and greater compliance with CPD. It is hoped that practitioners will manage the process well ensuring that there is a balance of activities, as their portfolio could be audited.

Concerns have been raised as to the availability of sufficient specialist internet courses of genuine relevance and usefulness in specialist areas. This may well be relevant to the ability of those with childcare responsibilities to undertake CPD other than by way of attending lectures which often take place at 5pm which is a time when children may need to be picked up from school. This highlights a more general difficulty with the availability of specialist lectures (such as COMBAR) which are particularly valuable as a CPD exercise but often take place at 5pm.

**Q6 Do you consider that the current system of applying for extensions of**

**time should be continued?**

Yes. The issue of a fee may need to be reconsidered to ensure it does not impact unfairly on certain groups. It is also noted that the need for extensions is decreasing with greater awareness of the CPD requirements.

**Q7 Do you agree that there should be no waivers of CPD requirements for**

**barristers who wish to retain their practising certificates?**

Yes although it is recognised that this may be a contentious issue. When an individual returns to practice for whatever reason there is inevitably a greater need for them to demonstrate that despite their break from practice they are fully apprised of current case law, statute, procedure and legal thinking. (para 130)

Obviously new parents will find the pressures on their time significantly increased. Moreover, for anyone returning to the profession after extended absences (eg 6 months) the reality is that they need to be up to speed - the authors of the report are right in their observations at para 130 that there is a greater need for the public to be protected and indeed someone having taken a prolonged absence undertaking more rather than less hours. Some of the impact of requiring more hours of CPD will be lessened by a greater diversity of courses and means of achieving the requisite 24 hours - and with increasing use of internet courses / pod casts and lectures being uploaded, practitioners can undertake their hours at times far more convenient for them. There is an argument however for the practitioner being entitled to have a greater period of time in which to attain these hours. It is of note the report does not address what the approach taken by other professions is on this issue. A further observation is the cost of suspending a practising certificate may well prohibit practitioners taking a leave of less than 12 months from suspending their practising certificate. Difficult issues arise in those areas where cases last a long period with the potential for appeals or satellite issues, on which advice is needed, during a period of maternity leave. It has been asked whether CPD and a Practicing Certificate must be maintained against that eventuality. On balance our view is that if a Practicing Certificate is maintained, it allows you to hold yourself out for all work and as such, the CPD requirement is justified.

**Q8 Has the system of accreditation of CPD providers and courses by the**

**BSB outlived its usefulness, indicating that it should be replaced by the**

**proposed system of barristers recording their own ‘verifiable’ and ‘nonverifiable’ activities?**

Yes.

The concern here is the volume of potential providers and the absence of any real ability to properly check these. There is also anecdotal evidence that some events are refused accreditation for reasons which are either unclear or unexplained while others, perhaps surprisingly, obtain the accreditation.

Commercial considerations should have no significant part in deciding what is best for the profession and to protect the public. That said, the BSB Website or similar may well be a useful central tool on which to advertise courses and this could attract listing fees. We would also draw attention to a potential need for high quality specialist podcasts, the requirement for which could be notified on such a website.

**Q9 Would a new system based on a barrister’s Declaration on application**

**for the renewal of the practising certificate, together with retention by the**

**barrister of a Portfolio recording CPD activities (for monitoring and**

**sampling purposes) be an effective means of ensuring CPD compliance?**

This is a more difficult question to answer. We understand the Working Group’s wish to simplify the system of reporting, simplify enforcement of the CPD Regulations, and transfer more of the responsibility for decision making about CPD to the individual barrister. We consider the proposals raise some unanswered questions generally, and for the Complaints Committee in particular.

1. Is 10% random sampling plus 10% having more detailed discussion enough to ensure compliance with the new system, particularly in its first few years? Some other regulators, for example ILEX, are in the process of moving away from random sampling towards a system of checking every member’s CPD record.
2. It is not clear from the consultation paper what form this 10% “random sampling” will actually take. Paragraph 148 of the consultation paper refers to “initial reading”, which may then “identify a number of returns that require further discussion”. Discussion with whom? Is this the same as the “more detailed discussion” with a senior practitioner which is suggested for a further 10% of cases? Will this merely be a check on the number of hours, which is arguably less of a check than is carried out at present, or will the type of activities undertaken also be scrutinised? If the latter, what is the “benchmark”? What will be the definition of, for example, “a balance of activities”? Who will ultimately decide if an activity is “verifiable” or “non-verifiable”? Who will ultimately decide if an activity is actually suitable for inclusion in a barrister’s CPD portfolio and how? It seems to us that these are questions which may ultimately come before the Complaints Committee and we am not sure how we will be able to answer them in the absence of detailed guidance.
3. If the CPD requirements are to be directly linked to an individual barrister’s practising certificate, how will the CPD monitoring which will be carried out as part of Chambers monitoring be linked to this? Paragraph 148 of the consultation paper refers to CPD records being produced as part of Chambers monitoring for “inspection and, if necessary, discussion” and nothing more.
4. It is also not clear what form the “more detailed discussion in the second round” as described in paragraph 149 would actually take. Who decides whether the senior practitioner chosen by the barrister is “qualified to assess the validity of the record”? Does this person have to be more senior than the barrister whose CPD record is being validated? We are concerned that, if not properly controlled, this may be viewed as the type of self-regulation of the professions that most regulators have now moved away from, and this in turn may affect the confidence which the public have in the system.
5. Paragraph 149 refers to the matter being taken up with the Professional Conduct Committee (i.e. Complaints Committee – see paragraph 36) if “such a person cannot be found, or a declaration cannot be provided”. Who would take it up with the Complaints Committee, and what would the Complaints Committee be expected to do? Would this for example be an “own motion” complaint about the barrister, or would the Complaints Committee be expected to assist the barrister in some way?
6. If a barrister had signed the CPD declaration (Appendix A) asserting that his/her CPD was relevant, sufficient, counted appropriately etc, and it was later found that the CPD had not been completed to an appropriate standard, would the false/incorrect signing of the declaration itself become a disciplinary matter?
7. Presumably the random sampling/discussion process would look at the barrister’s CPD over the previous 3 years, as this is the length of time the portfolio is required to be kept for monitoring purposes. Some clarity is needed as to how deficiencies going back 3 years could/should be rectified.
8. The draft CPD handbook at 5.2, 5.3 and 5.4 (page 132 of the report) appears to only identify non-completion of the minimum number of hours as an issue. This is reflected elsewhere in the report. The proposed new system therefore still seems to be a quantitative and not qualitative one, perhaps even more so than at present. In particular the proposed system seems to lack detail around how it will be decided if the type of CPD declared on a barrister’s portfolio is acceptable, and who will decide.

We can understand the reasoning behind, and the desire for, a “light touch” regulation of CPD, however we need to be satisfied that the proposed means of ensuring CPD compliance is sufficiently rigorous.

**Q10 Should the New Practitioners’ Programme be retained substantially in its**

**present form but based on an annual return as opposed to over a three**

**year period?**

The current requirement is that barristers have to complete a minimum of 45 hours in their first three years of practice. Within those hours, the new practitioner must complete the New Practitioners’ Programme (“NPP”), which requires that 3 hours must be spent in training in ethics and 9 hours in advocacy training. That training is provided by the Inns and the Circuits.

At present, there is nothing to prevent a barrister from completing all of those hours within (for example) the first year and then doing no further CPD for the remaining period. For instance, the South Eastern Circuit’s very popular course at Keble College provides 36 hours CPD (which includes the 12 hours for the NPP).

Retaining the NPP in its present form would mean that barristers commencing practice would still have to complete the 12 hour NPP within the first 3 years of practice. However, they would be in the same position as all other barristers under the new proposals and required to complete 24 hours CPD each year; the NPP would contribute 12 of those hours.

The recommendation would bring new practitioners in line with other practitioners in terms of their annual CPD return, while retaining the NPP programme. If all practitioners are required to undertake 24 hours CPD each year, there is no good reason why that should not equally to those at the start of their career. If the NPP is part of that quota, then there is no additional burden on new practitioners.

The Consultation Paper endorses the way that advocacy training within the NPP is provided by the Inns and Circuits (which is strongly influenced by the Advocacy Training Council). Given that the 9-hour minimum is exceeded in most cases, there is an argument that this should be formally increased to reflect both the importance of advocacy training and the current practice. New practitioners will now have to undertake 72 hours CPD in their first three years, which would accommodate an increase in the 9-hour minimum to 12 or even 18 hours’ advocacy training. We strongly support this increase.

**Q11 Should the Forensic Accounting Course be retained substantially in its**

**present form (but with some improvements to content and delivery)?**

This has proved a particularly difficult issue on which to get a consensus. Whilst it has strong advocates the following criticisms have also been made

1. it is very expensive with no competition in the marketplace
2. it is not particularly well taught
3. it is very time consuming
4. the same sort of information can be gleaned from the internet or through an online teaching module
5. the course content has been of little use in practice either in Court or in administration
6. the course did not appear to meet the needs of either criminal or civil practitioners, one observation made is that perhaps the providers, if this course is to be compulsory, should provide specifically criminal and civil courses - the Criminal practitioners observed that the only useful part of the course was when there a period of time explaining the different types of frauds that can be perpetrated and what to look for in such frauds.

There is merit in keeping some form of accountancy course for practitioners and it should continue to address practice administration points; however there should be more than one provider, this will ensure teaching standards are kept high, and that the cost is lowered. Not all sets pay for pupil or young practitioners’ attendance at this course and for those in publically funded practice it can be prohibitively expensive.

**Q12 Do you have any other comments on any of the recommendations or the**

**proposed new system as detailed in Chapter XVI of the Report or in the**

**draft Handbook?**

Findings and Conclusions (1 – 12)

Each year a proportion of practitioners fail to comply with CPD requirements, with a disproportionate number of defaulters who are sole practitioners. Many cite personal difficulties as the reason for their non-compliance.

It would seem logical that those who ‘struggle’ to cope should receive support from the BSB, to achieve parity with their colleagues who work in Chambers.

On the one hand, it is understandable that a busy sole practitioner may find it problematic to ensure that CPD is included in their practice schedule, but equally one would expect them to have higher standards and the expected level of compliance. It could be argued that members of the public might expect higher standards of professionalism from sole practitioners and would expect them to be up-to-date and to be able to demonstrate their expertise in the services provided.

*There is a need to audit compliance with a visible and practical system.*

The proposed system of having more flexible activities with online submission of CPD should reduce the perception of being ‘policed’ by the BSB and engender *trust in practitioners*. As the onus will be on practitioners, they will have to take responsibility for any problems that they encounter.

Whilst CPD requirements vary widely among professions, the purposes that it serves are similar, such as maintaining knowledge and skills.

It seems right that as changes are occurring within the legal profession as a whole, the CPD review is timely and should be considered positively by practitioners, to keep pace with the high demands of service users, in their choice of barristers. If it is easier to incorporate CPD into professional practice, then the number of defaulters through non-compliance is likely to decrease. A more straightforward access to activities, recording and monitoring systems, which offers the individual more freedom to plan activities according to need, seems to be the best way forward.

The Complaints Committee: October 2011

**From: Dermot Morrow**

Sent: 27 October 2011 16:53

To: Consultation

Cc: Simon Lofthouse QC

Subject: Response from the Complaints Committee to the CPD Consultation

Dear Consultation team,

I neglected to include in my previous message this covering note from the Chair of the Complaints Committee:

Whilst the view has been expressed that the document looks like it has been drafted by committee, we consider the issues you have raised are very important. We wished to provide as detailed a response as practicable on those issues whilst also recognising that the Chair of the Committee will sit on the CPD Steering Group.

The Committee considers that particular challenges will arise in effective enforcement of this proposed new regime.

We hope you will find our observations helpful.

Simon Lofthouse Q.C.

Atkin Chambers,

1, Atkin Building

Gray's Inn

London

WC1R 5AT

**From: Kate Bex**

Sent: 27 October 2011 17:52

To: Consultation

Subject: response to cpd consultation

Part 3 CONSULTATION QUESTIONS

20. The aim of the consultation questions is to determine the level of agreement with

the recommendations put forward by the CPD Working Group.

Q1 Do you think that the fundamental approach to CPD requirements should

continue to be based on a system defined by the number of hours of

CPD undertaken annually? Yes

Q2 Do you agree with the proposed new approach for CPD that will, as a

single but five-fold strategy (1) increase the range of approved CPD

activities; (2) increase the number of CPD hours per annum; (3) raise the

standard of record-keeping; (4) simplify the system of reporting, and (5)

simplify enforcement of the CPD Regulations?

No because although I applaud 1, 3,4 and 5 I do not support 2.

Q3 Do you agree that with the more flexible definition of CPD (Report

paragraph 117) the required number of hours should be increased from

12 to 24 hours per annum?

No, although some increase would be acceptable. The work load of a barrister now is so great, the admin burden so great and so much work unpaid that 24 hrs cpd is just piling it onto us.

Q4 Do you think that (if more hours are required) acceptable activitie

should include private study, relevant professional and personal skills,

and a wider range of training activities than is currently accepted?

Yes, otherwise it will be unduly onerous.

Q5 Do you agree that there should be no compulsory CPD topics for

established practitioners, but a balance of activities must be undertaken?

Yes, it makes complete sense that a practitioner will spend what little free time they have to do cpd work focussed on their area of practice anyway.

Q6 Do you consider that the current system of applying for extensions of

time should be continued?

Yes, there will always be genuine reasons for failing to comply within the time limit.

Q7 Do you agree that there should be no waivers of CPD requirements for

barristers who wish to retain their practising certificates?

Yes, otherwise what does a practicing cert mean?

Q8 Has the system of accreditation of CPD providers and courses by the

BSB outlived its usefulness, indicating that it should be replaced by the

proposed system of barristers recording their own ‘verifiable’ and ‘nonverifiable’

activities?

Not sure because I have never had to try to gain accreditation.

Q9 Would a new system based on a barrister’s Declaration on application

for the renewal of the practising certificate, together with retention by the

barrister of a Portfolio recording CPD activities (for monitoring and

sampling purposes) be an effective means of ensuring CPD compliance?

Yes, if they were at risk of spot checks.

Q10 Should the New Practitioners’ Programme be retained substantially in its

present form but based on an annual return as opposed to over a three

year period?

Not sure

Q11 Should the Forensic Accounting Course be retained substantially in its

present form (but with some improvements to content and delivery)?

Not sure

Q12 Do you have any other comments on any of the recommendations or the

proposed new system as detailed in Chapter XVI of the Report or in the

draft Handbook?

No thank you.

Kate Bex

2 Hare Court

Chambers of Orlando Pownall QC

**From: Paul Dunkels**

Sent: 27 October 2011 17:54

To: Consultation

Subject: Response

The suggestion that each of us should carry out 24 hours of CPD training each year is an oppressive burden on those practitioners who practice in the specialties dependent upon public funding. It is expensive to achieve the necessary CPD hours and many will regard 24 hours as an excessive financial burden in the context of continuing cuts in the rates paid by the LSC and CPS. The requirement will encourage meaningless courses that are performed on the cheap. Far better to concentrate upon monitoring the existing 12 hours so as to ensure that the courses are of high quality and relevant to the areas of practice of those attending.

Regards

Paul Dunkels QC

**From: Jonathan Goldberg Q.C.**

Sent: 27 October 2011 17:55

To: Consultation

24 hours is much too much and frankly unreasonable.

I am a member also of the New York State Bar, which is considered the most prestigious and highly regulated by comparison with all other American State Bars.

There would be a revolution there I suspect if the same proposal were to be made there.

They also have 12 hours CPD per year.

**From: Rex Howling**

Sent: 27 October 2011 18:10

To: Consultation

Subject: As above

I am not in favour of increasing the hours I spend on cpd training unless the work which I do when doing legal research can count. Rex Howling QC

Sent from my iPad

**From: Andrew Rosemarine**

Sent: 27 October 2011 18:09

To: Consultation

Subject: urgent Derek Wood QC CBE

Attachments: CPD AR Wood gin increase g271011.docx

Please acknowledge safe receipt

Andrew

To Derek Wood QC CBE 27 Oct 2011

**Mandatory CPD should not be increased at all for any barrister,**

**and certainly not for particularly well qualified ones (eg with 3 law degrees)**

Dear Mr. Wood,

1. The barrister knows that he needs to prepare himself properly for his actual instructions always; otherwise he risks the end of his career. He should be trusted to increase his professional development (beyond present requirements) as he himself best knows his own needs, rather than have imposed on him a mandatory one-number-fits-all increase.
2. The nature of individual practices is so varied, it is impossible to predict an exact ideal amount of CPD. Mandatory increases are artificial, and waste time of the barrister in extra administration: drastic increase in regulation is becoming oppressive to many.
3. **Conclusion**: it is unjust to enforce an increase. A fortiori, those barristers who prepared very broadly for practice with years of full-time additional legal studies, should not be forced to increase obligatory CPD. Additionally, such barristers are particularly likely to study whatever is necessary to them on their own initiative, as they have demonstrated keenness to study.
4. **Concrete example**: a barrister has 3 law degrees (Oxford, Brussels, Oxford) and completed 2 sets of professional law exams to qualify in 2 different jurisdictions. Because of these, he has spent many times more hours of additional legal studies than whatever sum BSB might ever impose, and passed legal exams for all of these proving expertise (beyond anything BSB requires.) Why insist on yet further *mandatory* CPD on such a barrister?

One appreciates that the proposed increase is well-intentioned, but it is burdensome and one step too far for some. (personally, I’ve done well over 24 hours this year, but strongly object to compulsory doubling of my requirement from 12 hours.)

Yours sincerely,   
  
Andrew M Rosemarine,

**From: Nigel Tozzi QC**

Sent: 27 October 2011 18:09

To: Consultation

Subject: Response to CPD consultation

I disagree with the proposal to increase CPD hours from 12 to 24, but as I suspect that the consultation process is a fig leaf on that point I am not going to waste my time on it.

However there is one point in Annex A which strikes me as daft, namely that activities which will count as non verifiable include reading by way of private study law reports, legal journals or similar materials otherwise than for the purpose of publication or providing legal services to a particular client [underlining added].

When I am advising a client I will often spend many hours researching the law, checking whether there are any relevant recent decisions and so on. Often this involves research which never finds its way into an Advice – sometimes because one concludes that the point is not relevant, or that not all of the cases looked at are in point, or because what the client wants is the end product, not the lengthy research and reasoning process which has got you there.

As this involves studying and bringing oneself up to date with the law I cannot understand the justification for excluding it. There is something ironic about saying that something we do which is highly relevant to the quality of the service we provide should not count for CPD purposes.

Nigel Tozzi QC

**From: John Passmore**

Sent: 27 October 2011 18:25

To: Consultation

Subject: CPD Consultation

Dear Sir/Madam

The accredited lectures and seminars I attend often amount to advertisements for the services of the speakers. Although some of the talks are interesting, the ones with real substantive content are not to a depth which might help me better advise or represent my clients. 12 or 24 hours learning in a year is so little that it could not possibly turn a negligent barrister into a non-negligent one.

In my view the CPD system is pointless.

Yours faithfully

John Passmore

**From: richard cole**

Sent: 27 October 2011 18:42

To: Consultation

Subject: cpd consultation

I am an employed barrister and think that the current cpd arrangements work well.

If the amount of cpd hours required is to be increased, there will be a further cost burden. This will be hard particularly for the criminal bar and the more junior end of it. I think many barristers are already struggling financially and attending further cpd courses also means additional travel.

If the bar council could provide free distance learning courses which qualify that may be helpful.

Regards

Sarah bergstrom

**From:**

Sent: 27 October 2011 19:10

To: Consultation

Subject: CPD consultation

I’m responding on my own behalf as an employed barrister, not on behalf of HMRC.

· There seems to be a different accreditation process for the Law Society and Bar Council in respect of courses and some courses that I have been to have been accredited for one but not for the other (eg some Institute of Advanced Legal Studies courses were just Law Society). It would be helpful to have a more streamlined procedure so that appropriate courses could be accredited for both purposes very easily and without charge.

· My immediate reaction is that 24 hours PA is quite a significant increase –particularly if people will need to work overtime to achieve it and it may be difficult for those with family commitments to get to sufficient accredited courses if the requirement for accredited courses increases. In a way, professionals are responsible for ensuring their own continued professional development and should be trusted to do so. I always exceed the required 12 hours and attend the appropriate courses for my area of practice. I’ve noticed that most providers won’t let you sign the form before the end (one I attended the other day therefore had a long queue afterwards for the piece of paper) and this does send a message that we are not trusted. Perhaps more effort could be put into encouraging barristers to see the value of CPD and specifying a certain number of accredited hours (perhaps on a par with whatever the Law Society requires of solicitors in that respect) and then encouraging attendance at other events? The whole process could be presented in a more “consumer friendly” way?

· I also gave a talk this year. It was for about 20 mins as part of a longer presentation of an hour with 2 colleagues. I spent lots of time researching and preparing it as I drafted much of the handout too and helped others with their powerpoint slides. However, I understand that because the talk element itself was only 20 minutes I can only claim the CPD of 1 hour for attending the talk (as one of the presenters as I stayed whilst everyone spoke) and nothing for the preparation, which is rather a shame and was in fact the main legal learning activity.

Kind regards,

Megan

**From: Michael House**

Sent: 27 October 2011 20:41

To: Consultation

Subject: CPD

CPD is a total waste of time. In the present climate, with solicitor-advocates supposedly "competing" with the Bar while deciding who gets what work, any barrister who does not keep up voluntarily with developments in the law is going to lose out. After 35 years of practice, I do not need, nor do I have time for, a pointless box-ticking exercise no doubt dreamt up by some Jobsworth with too much time on his/her hands. Please stop treating seasoned professionals like schoolchildren. There may be some justification for continuing the training of newly qualified barristers - though if the quality of pupillage applications my chambers is getting is typical of the Bar as a whole, I doubt it is necessary.

My preference would be for the whole CPD nonsense to be scrapped, but please don't double the requirement. There aren't enough hours in the day as it is. Like almost all practitioners, I keep up with developments in my field, but in my own time.I don't need a pointless bureaucracy to encourage me to do so.

Your sincerely,

Michael House

**From: Francis Treasure**

Sent: 27 October 2011 21:39

To: Consultation

Subject: CPD consultation

12 hours a year is more than enough.

Best wishes

Francis

Francis Treasure

**From: Toby Sasse**

Sent: 27 October 2011 22:25

To: Consultation

Subject: cpd points

To answer the questions posed in the consultation document in order:

1. Is an hours based approach right - Yes.

2. Do you agree with the 5 fold approach proposed - No in particular item (2), see next point.

3. Do you agree that the number of CPD hours should double in conjunction with a more flexible approach to eligible CPD activities.- No.

\* The report acknowledges no evidence base to suggest that completion of more hours of CPD would substantially advance the objectives identifed for CPD or that the current level of commitment honestly complied with does not deliver.

\* There is a complete absence of reasoning, evidence based or otherwise, for the proposed number of 24 hours of CPD, but it would seem to place a burden on the Bar which no competitor organisation presently or foreseably will adopt .Whilst 12 hours of CPD is a level which attains high levels of compliance, is achievable reasonably affordably and commands broad agreement across the profession, an unscientific and massive increase of the level proposed would not command such a consensus, would be a real burden on a profession already coping with very long hours of work, and increase cost at a time of reducing fee income particularly at the publicly funded bar.

\* It is baldly stated that the public would probably not have confidence in such a limited number of hours as are currently imposed. This sounds like a hollow guess. My own experience is that BSB directly accredited courses generally command a high level of delegate satisfaction for the quality and relevance of the material. It is not always my experience that the same general satisfaction is expressed for other organisations accredited courses. I also would note that in my experience the hours accredited for Barristers attending courses concurrently accredited for solicitors is frequently substantially less (by a factor of 30-50% on occassions). If upto 12 hours of high quality and in practice largely accredited training is acquired by Barrister in a year that compares highly favourably to 16 hours acquired by a solicitor perhaps attending fewer/shorter courses. There is something plainly wrong here, and it is no business of the BSB to impose overly burdensome uncompetitive and evidentially unjustifed requirements on this profession.

\* Direct comparision with GMC or Dental CPD is plainly inappropriate, not least as the approach to qualifying activities remains fundamentally different even under the revised proposals. If one compared the amount of self-improvement and self-education which competant and diligent members of this profession routinely undertake but which is not now nor proposed to qualify but which would be accepted as relevant training for Dr's etc then I would expect the apparent difference would disappear. I do not advocate allowing such unverifiable "study" to qualify however.

\* There seems to be a contradiction between the argument that the difficulties of policing effective accreditation justify abandoning the distinction betwen accredited and non-accredited CPD (particularly where as for other professions it is argued in the report that a measure of credit for professional integrity is warranted) and the argument that background reading and private study etc should not be included. I happpen to agree that such work should not qualify as it is too easy to backslide and convince oneself of the extent of such work; a sure way ultimately to lose public confidence in a un-verifiable CPD system.

\* Accreditation does require at least that the organiser to put forward a proposal for scuitiny and to claim to be delivering the quality content promised. If only a small random sample were then closely examined this would still be a means to keep the process honest, with consequences for failure. I therefore would keep accreditation if with some revisions. One of which would be to increase the proportion of formally accredited content in the 12 hours (which | anticipate will not impose much additional cost as the majority of my colleagues currently fulfill their CPD requirement largely from accredited content.

4. If more hours are required should it include: private study - No, see above; relevant professional/personal skills - Why not particularly if accredited; wider range of training activities - cautiously yes.

5. Compulsory topics for established practitioners, but a balance of activities must be undertaken - I still am unlcear what is meant by a balance of activites. If the logic of the report is that there should be respect for the integrity and diligence of the profession, subject to safeguards such as record keeping declaration and sampling, what would the justification for a straightjacket on the self-devised programme adopted by an already qualified professional operating in a competitive field. He/she would be a fool to devote time to the irrelevant or to neglect essential areas of knowledge.

6. Should extensions of time continue -I have never understood why acquiring the current requirement of hours cannot be completed in 12 months (save in cases of ill-health pregnancy etc.. I would wholly understand why busy practitioners would frequently have difficulty with 24h/year.

7. Allow waiver of CPD requirements if practicising certificate required - No.

8. Continue accreditation - Yes with improvements. As stated above accreditation may be hard to quality control but there are some means to do so and generally the standard is good. Verified and non-verified only provides a minimum number of hours of objectively confirmed training. It does nothing to uphold standards of training and leaves unguarded and open to cynical misuse a crucial aspect of the credibility of a CPD system. If the quality/integrity of verifiable events falls, how long does public confidence last then?

9. Declaration and record keeping- Yes.

10. NPP- I have not understood there to be any disquiet as to the quality or value of this programme and with limited insight would favour retaining it.

11. Forensic A/c: As a civil practitioner I would argue it is a valuable course and would have thought it was also for other fields.

12. Other comments - I am deeply disturbed by the lack of evidence based research to demonstrate that the current system needs radically extending or is failing to deliver that which a CPD system should. There is no impact assessment in terms of compliance issues, competition issues, costs of complaince etc. Ultimately this regime is imposed on individuals operating a business in a competitive environment . We are generally a low overhead and low resource profession of individuals. Whilst high standards are essential to our reputation and for publlic confidence, great caution is required before imposing a substantially increased burden on the profession and broad professional consensus should be obtained. I for one was ignorant of this consultation until I received the emailled BSB October update today and I suspect that a large swathe of the bar is ignorant of and would be appalled by the breadth of current proposals, yet the consultation expires on 31st October. Expect howls of anger and protest in due course unless this process is better telegraphed to the profession and a proper consensus built.

Yours faithfully

Toby Sasse.

**From: Peter Kilgour**

Sent: 28 October 2011 08:56

To: Consultation

Subject: CPD

I do not agree to an increase in the number of hours from 12.

Peter J Kilgour

**From: Robert Howe QC**

Sent: 28 October 2011 09:36

To: Consultation

Subject: CPD Consultation - response

I have a number of serious reservations about these proposals, including in particular the proposal to double the number of CPD hours; to transfer the burden of record keeping onto individual barristers; and to threaten to suspend from practice barristers who fail to do their hours, which appears to me to be wholly disproportionate to the offence – and probably contrary to Article 6 of the Convention, as well.

My answers to the specific questions raised are as follows:

Q1 Do you think that the fundamental approach to CPD requirements should continue to be based on a system defined by the number of hours of CPD undertaken annually?

Yes

Q2 Do you agree with the proposed new approach for CPD that will, as a single but five-fold strategy (1) increase the range of approved CPD activities; (2) increase the number of CPD hours per annum; (3) raise the standard of record-keeping; (4) simplify the system of reporting, and (5) simplify enforcement of the CPD Regulations?

I would, apart from the increase in hours, if that is what the proposals actually achieved. But as currently formulated, they do not.

(1) Yes.

(2) No. 24 hours

a. Doubles the burden on barristers

b. Is far in excess of the requirements of any other profession.

c. Fails to take into account that, unlike many other professions, the Bar is a specialist referral profession, so that simply carrying out your day to day work involves constant, detailed research and “CPD”. If anything, this should be reflected in a reduction in the number of hours.

d. Fails to take into account the fact that barristers, even in large chambers, are individual practitioners, for whom time is not only money but frequently very scarce – so they should not be subjected to further administrative or regulatory burdens unless there is convincing evidence that this is actually necessary. There is none (see next).

e. Is not justified by any objective evidence. There is, in fact, no evidence at all that the existing 12 hours is in any respect failing to keep barristers sufficiently “professionally developed”.

(3) I do not believe the proposals involve raising the standard of record-keeping. On the contrary, they appear to involve imposing a burden on barristers to keep an unspecified quantity of records of their activities, for years, against the threat that if they are inspected at some point and found wanting, their livelihood (i.e. income, families, and mortgages) may be at risk.

To take a concrete example: I spend an average of 15 to 30 mins a day reviewing and noting daily law reports. What am I supposed to do? Keep timesheets of this, every day, for years?

(4) No. I do not believe that the proposals do involve any simplification of record-keeping. See previous answer.

(5) No. I do not believe that the proposals do involve any simplification of enforcement. See previous answer.

Q3 Do you agree that with the more flexible definition of CPD (Report paragraph 117) the required number of hours should be increased from 12 to 24 hours per annum?

No – see previous answer

Q4 Do you think that (if more hours are required) acceptable activities should include private study, relevant professional and personal skills, and a wider range of training activities than is currently accepted?

Yes. In fact, this should be done without an increase in hours, as it would reflect the reality of how barristers CPD. Most of our useful CPD is done in private study, not in accredited lectures (which can often be of limited use, and, to the extent they are, not an efficient use of time).

Q5 Do you agree that there should be no compulsory CPD topics for established practitioners, but a balance of activities must be undertaken?

Yes, provided the “balance” is sensible and actually reasonable reflects necessary CPD for the barrister concerned.

Q6 Do you consider that the current system of applying for extensions of time should be continued?

Yes.

Q7 Do you agree that there should be no waivers of CPD requirements for barristers who wish to retain their practising certificates?

No. Circumstances change, and people often need to take time out for all sorts of good reasons (childcare, illness, career breaks etc etc). If there are no waivers, a huge backlog of CPD time could build up.

Q8 Has the system of accreditation of CPD providers and courses by the BSB outlived its usefulness, indicating that it should be replaced by the proposed system of barristers recording their own ‘verifiable’ and ‘nonverifiable’ activities?

Yes – but only if the record keeping requirements are sensible and not onerous. The current proposals appear to be unrealistic, not in touch with the realities of a barrister’s daily life, and potentially oppressive. There appears to be no recognition that the great majority of barristers operate with little or no personal administrative support; and there are frequently periods (eg when they are in trial) when their professional obligations to their clients – which must always come first - mean that it is practically impossible to spend time on these activities.

Q9 Would a new system based on a barrister’s Declaration on application for the renewal of the practising certificate, together with retention by the barrister of a Portfolio recording CPD activities (for monitoring and sampling purposes) be an effective means of ensuring CPD compliance?

Yes – but only if the requirements for the “Portfolio” were sensible and very clearly defined. The current proposals do not appear to be – see previous answers. A barrister must know precisely what records s/he is required to keep – it is no use being told years later, during an audit, that they are inadequate. The requirements must also be reasonable.

Q10 Should the New Practitioners’ Programme be retained substantially in its present form but based on an annual return as opposed to over a three year period?

No comment.

Q11 Should the Forensic Accounting Course be retained substantially in its present form (but with some improvements to content and delivery)?

No comment.

Q12 Do you have any other comments on any of the recommendations or the proposed new system as detailed in Chapter XVI of the Report or in the draft Handbook?

No.

**From: Isaac Maca**

Sent: 28 October 2011 10:02

To: Consultation

Subject: CPD Consultation

Dear Sirs

I read with great interest the proposed changes to CPD and I must confess I got the impression the proposed members of the working group must either have no life outside the working environment or have minimal commitments or lots of time on their hands.

Amongst their suggestions were extending CPD to including private study and legal writing – the problem the BSB will encounter with this is the basis on which who is to judge and how many points are accordingly to be awarded and whether this is fair.

Let us not forget the underlying purpose of CPD – that is to encourage those who are in practice to brush up and enhance their skills either with a view to bettering their knowledge and thereby making them more capable or helping to build on areas, where they would otherwise have a weakness (e.g. experience gap by not doing a case on a particular area of law or losing touch with an area of law in which they practice).

The problem with the current system is not the need to increase greater areas so that they count or for that matter increasing the number of hours that need to be done. Rather the reform of the courses and avenues available, which in some cases make a mockery of the whole thing.

It would be my suggestion that online courses should be abolished for example. There is no way to verify what the actual value of such a course is, as the manner in which it is done or how much time is actually spent over it is debatable. You can do an online course without actually actively participating within it.

Equally, teaching and other chambers related courses should not count. Some chambers are very good with lecturing courses often in house while others are lagging. Again, what is actually done by the individual as opposed to a team may not actually serve the purpose of CPD (eg the individual did some research or assisted with delivery but this required multiple input from others).

My proposal is simple. Limit the CPD activity to actually attending (physically) courses of relevance to your practice. These must be courses provided by an independent provider. Providers can be increased e.g. encourage more universities to get involved but the activities need to be looked at again. Keep the existing accredited/unaccredited split but leave it to the individual to justify relevance if taken further.

Correspondingly there must be control on the costs – there must be a maximum a course provider can charge. The costs of some courses are so extortionate it makes attending unfeasible. The erroneous impression by some providers is that Barristers are full of money and therefore any ridiculous charge is acceptable. CPD would become a lot more popular if the cost was lower and more manageable. There is no justification for some of the ridiculous charges eg £300 plus for an event, when such an expense cannot be justified. The BSB must do more to bring costs down. This is a must.

The working group also ask for a double fold increase in the number of hours applicable. I do not believe this has been properly thought through. A lot of CPD courses are either done in evenings or if a practitioner takes time off to attend a course.

In these austerity ridden/ cost saving times, there are seldom few barristers, who can afford to regularly take time off or turn away a case as there is a CPD course to attend to. This is especially so at the Junior end where earnings are otherwise not particularly high anyway. I accept it can be done on occasions but if the points are increased to 24, this will lead to more days out of Court in order to attend CPD courses, which cannot be justified.

Not everyone is able to attend evening CPD courses. The increase to 24 points will have a disproportionate impact on women, sole practitioners, single parents and those with children. Let me explain why with my own example. Both myself and my wife work during the day. Some of our children are looked after by a nanny after School for from 4.45 pm until 6.30 pm. By 6.30pm we both have to make sure we are back as one of us has to come back and take over from the nanny and another has to go and pick up our youngest, who is otherwise looked after by his grandmother all day. The point being here is that attending evening courses for CPD and the like is extremely difficult short of burdening the other half with additional running around. The only CPD courses I attend to therefore are those which I can do during the day (thereby taking time off) and the odd one, where advance planning allows my other half to be burdened with additional responsibilities. If there was an increase to 24 points, I would only be able to fulfil this requirement by taking more days off, which in these current times is extremely difficult to justify. The burden would be even greater for single parents, sole practitioners and women with domestic duties (i.e. husbands who expect to be fed – which lets face it include many male Barristers of a generation where this was the norm).

It is said the public expect an increase to 24 hours. I think this is nonsense. The public expect their Barrister to know what he or she is doing. This does not depend on the number of hours of CPD but the quality of them. You can expect to keep on top of legal changes with 12 hours CPD. There is simply no need to increase this to 24 hours.

At a time when a Barristers practice and chambers are facing a head on assault from many directions and the administrative burden and responsibilities are ever increasing and in these difficult cost cutting times, the BSB must do more to assist Barristers and be seen to be assisting and acknowledging reality rather than be seen as part of the problem or as another organisation keen to financially drain Barristers of whatver money they have.

Isaac Macca

Barrister

**From: Crossley, Katrina (LNG-LON)**

Sent: 28 October 2011 10:32

To: Consultation

Subject: Bar Standards Board consultation

Attachments: Letter to Ms Prats from Nicky Briggs 16 June 2010.pdf; Letter from Ms Prats to Nicky Briggs July 2011.pdf

Dear Ms Prats,

Referring to our letter of 16 June 2010 and your reply of 22 July 2011, both attached to this email, we have now had a chance to consider your consultation paper on the proposed new system of CPD for barristers and are delighted to note some of the changes you are proposing.

In particular, we note how the imbalance in the position of legal writing in the context of CPD as it applies to newly qualified practitioners and established practitioners will be redressed. Whilst retaining a distinction between the CPD requirements applicable to newly qualified practitioners and those applicable to established practitioners by imposing a minimum number of hours to be set aside for advocacy training and ethics training, there now seems to be a recognition that some of the CPD requirements of newly qualified barristers can be met through undertaking a number of verifiable activities such as legal writing.

We are also delighted to note the introduction of a relatively simple and flexible CPD programme which fully acknowledges the value of legal writing and legal research in satisfying the CPD requirements of barristers and allows for an increased recognition of those activities.

LexisNexis, as publishers of legal writing, would like to propose a couple of amendments to the Handbook in relation to what constitutes legal writing and the verification process. We hope these proposals will be of assistance to the profession and provide some further clarity to cover the notion of legal writing as it is now and is developing for the future.

Legal writing is currently defined in a number of places in a way we consider to be potentially restrictive and not reflective of the legal writing activities of the barristers who write for LexisNexis and other publishers. See in particular, Table 6 of the review (Activities which should count), paragraph 2.4 of the Draft Handbook for Continuing Professional Development Legal writing, and, Appendix C Summary Sheet of the Proposed new Model (‘CPD at a Glance’). In these instances legal writing is defined as “publishing a book or article”. We believe that the guidelines and the Handbook in particular would be more helpful if the definition could specify that legal writing includes “writing on Law or Practice for law books, encyclopaedias, practical guidance, journals, in hard copy and/or online”. This would enable the definition to relate writing about the law and the practice of law and also cover the range of publications and formats which barristers write for now and will write for in the future.

In relation to the verification process, we would like to propose a separate table for legal writing. The current table of verifiable activities assumes that the activity is an event.

We would like to propose that a table similar to the following be included:

Verifiable Activity: Legal Writing (1 January – 31 December 2013)

Date

Title of Publication

Publisher

Hours

Alternatively, the current table could be amended as follows:

Verifiable Activity (1 January – 31 December 2013)

Date

Activity

Provider/Organiser/Publisher

Hours

Reasons for attending or undertaking the event/activity, relevance for practice, and reflection on own learning

To assist the Bar Standards Board in the verification process and to support our barrister authors we would be happy to provide the Bar Standards Board with the necessary verification of the legal writing activity undertaken. This could be in the form of a letter confirming the barrister’s contribution to the named publication. If this would be of assistance to the Bar Standards Board, the necessity for such a notice from the relevant publisher could be included in the Handbook, with a pro forma as an example.

I hope that these suggestions are of assistance. I would be happy to discuss this further with the Bar Standards should that be useful.

Kind regards

Katrina Crossley

Katrina Crossley

Head of Editorial Co-ordination

LexisNexis

**From: David Hoffman**

Sent: 28 October 2011 10:43

To: Consultation

Subject: CPR consultation

Dear Sirs

My response to the consultation

Q2: I do not agree with the proposed new approach to increase the number of CPD hours. It is already difficult to fit in for certain sorts of practise - I am a busy commercial / chancery practitioner so the range of my work inevitably means that learning activities such as research is a large part of what I do anyway. I have no objection to some CPD. I also tend to attend conferences of one sort and another anyway, but these often do not count

I agree with simplifying reporting.

Q3: I disagree with adding hours even if more activities are included

Q4: I agree with expanding activities in any event

Q5: compulsory topics for established practitioners would be entirely impractical. Any limitation simply makes CPD less practicable: there is no predicting what sort of CPD will be accessible in any given year because of the time constraints of practice.

Q6: yes (though I have never needed one but I don't think CPD is a good test by itself of fitness to practise)

Q7: no view

Q8: I think the most important thing is that whatever system is adopted it is straightforward: at the moment it is difficult and expensive to get a genuine learning opportunity accredited. The BSB should not be making money out of CPD when it relates to activities provided by barristers themselves.

Q9: Yes

Q10: no view

Q11: I found it valuable, as a commercial pupil

May I also comment on the consultation exercise: it would be more effective if the key elements that you want comments on were more easily accessible on the website with an easier way to respond.

yours faithfully

David Hoffman

Barrister, 18 St John St Chambers, Manchester

**From: Francesca Compton - ChBA**

Sent: 28 October 2011 10:55

To: Consultation

Subject: Chancery Bar Association Response

Attachments: Chancery Bar Assoc CPD consultation response (final).pdf

Dear Sir/Madam

I attach the Chancery Bar Association’s considered response to your consultation on CPD Requirements.

Please let me know if you have any queries.

Kind regards,

Francesca Compton

Administrator, Chancery Bar Association

**THE CHANCERY BAR ASSOCIATION**

**RESPONSE TO THE BAR STANDARDS BOARD’S CONSULTATION ON THE REVIEW OF CONTINUING PROFESSIONAL DEVELOPMENT**

**Introduction**

1. The Chancery Bar Association is one of the longest established Bar Associations

and represents the interests of over 1,100 members handling the full breadth of Chancery work at all levels of seniority, both in London and throughout England and Wales. It is recognised by the Bar Council as a Specialist Bar Association. Full membership of the Association is restricted to those barristers whose practice consists primarily of Chancery work, but there are also academic and overseas members whose teaching, research or practice consists primarily of Chancery work.

2. Chancery work is that which, when contentious, is normally assigned to the Chancery Division of the High Court of Justice, which sits in London and in regional centres outside London. The Chancery Division attracts high profile, complex and, increasingly, international disputes. In London alone it has a workload of some 4,000 issued claims a year, in addition to the workload of the Bankruptcy Court and the Companies Court. The Companies Court itself deals with some 12,000 cases each year and the Bankruptcy Court some 17,000.

3. Our members offer specialist expertise in advocacy, mediation and advisory work across the whole spectrum of finance, property, and business law. As advocates they litigate in all courts in England and Wales, as well as abroad.

4. This response is the official response of the Association. It has been produced by Mark West, Ian Clarke, Catherine Addy and Georgia Bedworth and approved at the meeting of the Association‟s Committee on 19 October 2011.

**Q1 Do you think that the fundamental approach to CPD requirements should continue to be based on a system defined by the number of hours of CPD undertaken annually?**

Yes, but with any time calculation not based on „rounding down‟.

**Q2 Do you agree with the proposed new approach for CPD that will, as a single but five-fold strategy (a) increase the range of approved CPD activities; (2) increase the number of CPD hours per annum; (3) raise the standard of record-keeping; (4) simplify the system of reporting, and (5) simplify enforcement of the CPD Regulations?**

No, for the reasons for which are given below.

**Q3 Do you agree that with the more flexible definition of CPD (Report paragraph 117) the required number of hours should be increased from 12 to 24 hours per annum?**

No. Whilst we agree with the more flexible definition (and recommendations 3 – 5), we have seen no evidential justification for the increase in the overall number of hours. There is no suggestion in the Report that 12 hours‟ CPD is insufficient to keep barristers up to date with developments and techniques relevant to their field of practice. Nor is there any evidence that the public consider that the present 12 hours is inadequate. The comment at paragraph 119 of the Report that “we suspect that the public will not think that 12 hours are enough” is not evidence, and does not provide a justification for change. We also note that solicitors are only required to do 16 hours and that The Faculty of Advocates requires 10 hours and the Law Society of Scotland requires 20 hours. No other legal regulator requires 24 hours.

**Q4 Do you think that (if more hours are required) acceptable activities should include private study, relevant professional and personal skills, and a wider range of training activities that is currently accepted?**

Yes. As to activities which are excluded from qualifying for CPD, we question why sitting in a judicial capacity is excluded. We consider that the observations at paragraph 100 of the Report strongly support its admissibility as a CPD qualifying activity and would encourage its admission subject to a cap of (say) 4 – 6 hours on the number of hours that may be claimed.

**Q5 Do you agree that there should be no compulsory CPD topics for established practitioners, but a balance of activities must be undertaken?** 3

As to the absence of compulsory CPD topics, we are in agreement. If the requirement to demonstrate a balance of CPD activities is achieved by rules which impose limits on the number of hours which can be allocated to any particular activity, we also agree with the requirement for a balance to be shown. Insofar as any requirement to demonstrate balance were to depend on other, more subjective criteria, we would strongly oppose the adoption of any such criteria on the grounds that it would be admit uncertainty and subjectivity and be impossible to police.

**Q6 Do you consider that the current system of applying for extensions of time should be continued?**

Yes.

**Q7 Do you agree that there should be no waivers of CPD requirements for barristers who wish to retain their practising certificates?**

The justification for the „no waiver proposal‟ is that “the power to grant extensions of time [to comply with CPD requirements] on appropriate terms, or to re-issue a practising certificate subject to conditions about CPD” should cover the relevant instances. In the absence of a more detailed explanation as to the “appropriate terms” or conditions to which a practising certificate may be subject, it remains unclear that these provisions would (in fact) provide the flexibility that the current system (which advances the cause of diversity and inclusivity at the Bar) enjoys. Extensions of time for compliance are routinely given in relation to those returning to practice after maternity leave or other prolonged absence and thus the CPD system does not operate as a barrier to re-entry and an inhibition to the diversity and inclusivity towards which the Bar is working. Whilst, in our view, it would be better to deal with most circumstances as suggested in paragraph 130 of the Report, we would (in order to maintain the ability for individuals to re-enter the profession) wish to see the jurisdiction preserved, in exceptional cases, to permit a waiver at the discretion of the appropriate regulatory body.

**Q8 Has the system of accreditation of CPD providers and courses by the BSB outlived its usefulness, indicating that it should be replaced by the proposed system of barristers recording their own ‘verifiable’ and ‘non-verifiable’ activities?**

Yes. We are in agreement with recommendations 13 and 14, although with regard to the latter we can express no view as to whether or not the loss of the income stream can be offset by the route suggested.

**Q9 Would a new system based on a barrister’s *Declaration* on application for the renewal of the practising certificate, together with retention by the barrister** 4

**of a *Portfolio* recording CPD activities (for monitoring and sampling purposes) be an effective means of ensuring CPD compliance?**

Yes. We are in agreement with recommendation 15 on the premise set out in paragraph 142 of the Report that “filling in the form will not be an elaborate or time consuming exercise”. We disagree with Recommendation 16 insofar as it requires a „reflective assessment‟. Such subjectivity has no place in the process. We agree with recommendations 17 and 18. Insofar as third party verification is required (recommendation 19) we have some reservations about the desirability (in the majority of cases) of imposing the obligation to scrutinise on individuals outside Chambers. Internally, a Head of Chambers or another silk can (as part of their administrative function within Chambers) be expected to comply with the obligations imposed on them under the CPD system; we doubt that third parties such as benchers or leaders of a Circuit would welcome the further administrative imposition that this proposal would entail if followed in any significant number of cases. We agree with recommendation 12 (no waiver on ground of seniority or special eminence).

We disagree with the linkage, however, between CPD compliance and its verification and the issue of an individual‟s Practising Certificate. We consider that to be disproportionate and consider a system of sanctions as currently in place should continue. Since it is recognised that there is no objective evidence that CPD has any bearing on the ability of the barrister to do his job (paragraph 73 of the Report), the refusal of a Practising Certificate (which may lead to the commission of a criminal offence and (costly) disruption to the trial process) with a requirement which does not go to the root of an individual‟s competence to practice is not justified.

**Q10 Should the New Practitioners’ Programme be retained substantially in its present form but based on an annual return as opposed to over a three year period?**

We agree that the current NPP programme which allows the acquisition of the requisite CPD hours in one “hit” within a 3-year window is not ideal and can see force in the recommendation at paragraph 174 of the Report. As presently constituted, it is our understanding that the majority if not all of the NPP compulsory courses are provided by the Inns, the specialist Bar Associations (of which the Chancery Bar Association is, in this respect, an important provider of such courses) or the Circuits. In our view, the determinant as to whether this proposal is adopted must turn upon the practical availability of courses for those requiring (annually) to discharge their obligations as newly qualified practitioners.

**Q11 Should the Forensic Accounting course be retained substantially in its present form (but with some improvements to content and delivery)?** 5

Yes. We consider that there are compelling grounds for the training of pupils in the reading and analysis of accounts and to further and understanding of accountancy practice. Feedback that the Chancery Bar Association has received from pupils and the newly qualified positively supports the course and its objectives.

**Q12 Do you have any other comments on any of the recommendations or the proposed new system as detailed in Chapter XVI of the Report or in the draft Handbook?**

Yes. We consider that the proposed mechanics for verification are burdensome and unsuitable and will simply lead to unnecessary paperwork. Not all seminars generate paperwork only for those who attend. Many are free, with the materials posted on the internet immediately thereafter. We support the continuation of the practice of „signing in‟ as the procedure for verification of attendance to the exclusion of and in substitution for the proposed requirement for the retention of the additional paperwork. We are also doubtful that requiring established practitioners to embark on the required reflection and self-evaluation can or will serve any useful purpose other than to require formulaic answers merely to satisfy the requirements of the system.

**From: Bridget & Stephen Smyth**

Sent: 28 October 2011 11:13

To: Consultation

Subject: CPD

Like most Criminal barristers I am fed up and wanting to press for a union to protect our interests. It is not just the erosion of our fees. As form this year our travelling expenses are no longer allowed where I operate on the western circuit. Parking used to be free at court now we pay £8.50 a day. There is much less work with the CPS prosecuting most of their own cases and much more remaining in the magistrates court. whilst I obtain many of my points through the JSB the remainder are expensive to obtain. Barristers keep up to the mark by researching the cases they do. I sit in and defend entirely sex cases. I sometimes find myself having to sleep through some civil lecture at great expense just for an extera point or two. If you raise the threshold you risk the Bar simply boycotting the whole system. I do not think you appreciate the anger within the Bar at the moment.

**From: Abigail L. Bache**

Sent: 28 October 2011 11:30

To: Consultation

Subject: Proposed increase of hours

Dear Sirs,

I wholly disagree that it is necessary to increase the CPD requirement by 12 hours to 24 hours. As you are aware, for most practising barristers, maintaining a constant awareness of changes in legislation is essential for a practice to succeed. Those who do not take the time to inform themselves of legal updates do not generally get instructed as often as though who do, it at all. I appreciate that the BSB needs to have some sort of confirmation that barristers are taking the requisite courses but 12 hours is more than adequate in that regard.

The CBA, of course, profits directly from the provision of these courses so you will not surprised that from the bar’s perspective this looks like nothing more than a shameless attempt to double your profit from a profession that you have failed to protect from savage legal aid cuts. We are being attacked on all sides at the moment and the last thing we can afford is to double our CPD payments for hopeless courses that keep us out of court where we actually keep our skills updated.

No doubt you will do it anyway.

Abigail Bache

Garden Court Chambers Seminars <http://www.gardencourtchambers.co.uk/resources/seminars/index.cfm>

**From: Fung, Nora**

Sent: 28 October 2011 12:23

To: Consultation

Subject: Response

Sirs,

I believe that we should retain the status quo. The regulatory objective of the Legal Services Act is to encourage an independent, strong, diverse and effective legal profession; as far as I am aware, this objective is being met based on the existing 12 hours. I see no reason therefore, for an increase. Furthermore, those activities which are regarded as ‘verifiable’ are very much geared towards those in private practice; for those of us in the employed bar, the options are more limited.

Thank you.

Regards,

Nora Fung

**From: Tony Ventham**

Sent: 28 October 2011 13:01

To: Consultation

Dear Sir/Madam,

I cannot express the level of despair I felt when I heard of the proposed doubling of the hours of CPD. I am a criminal defence barrister of 20 years call, and saw the introduction of CPD. I was, and still am, supportive of continual training and am aware that one should never consider one’s days of learning are in the past. But the doubling of hours, indeed any increase, will be incredibly onerous, especially for the criminal bar. We work increasingly long hours for less and less pay. The swinging cuts in legal aid are already having a devastating effect on those whose dedication and professionalism have been previously pushed to the very limit. Any increase in hours will necessarily and inevitably mean an increase in cost that we will have to find out of our decreasing income. For many it will be the final straw. One can’t help but feel that the powers that be really hate us. They expect, nay demand, we work longer and longer hours for less and less. It is hard to think of any other group of professionals that have had to undergo what we have had to, and yet they come back and demand more. I beg you not to increase the twelve hours presently required. If the professor believes that further education is necessary (surely there is some conflict of interest here!) then let there be an incentive in the form of increased payments rather than yet more compulsion and dictates.

Yours despairingly,

Tony Ventham

Carmelite Chambers

9 Carmelite Street,

London EC4Y 0DR

**From: Yousuf, Farah**

Sent: 28 October 2011 13:32

To: Consultation

Subject: CPD points

Dear Sir ,

12 Hours CPD fines is enough and should not be raised to 24 hours

Kind Regards

Farah Yousuf

**From: Sarah Kilvington**

Sent: 28 October 2011 13:31

To: Consultation

I think the proposed doubling of CPD to 3 working days a year (ie 24 hours) is onerous and unnecessary. The reality is that as self-employed practitioners, all counsel have a keen interest in keeping their knowledge up-to-date and current - the 12 hours is "reassurance" to solicitors for those small minority who need such a "prod", everyone else researches and learns regularly.

Regards.

Sarah Kilvington

18 St John St

**From: MarcMaitland**

Sent: 28 October 2011 16:25

To: Consultation

Cc:

Subject: My response to the Consultation

Dear Master Wood,

I am in complete agreement that the apparatus for dealing with record-keeping and then the pettifogging way that the Bar Standards Board follows up technical breaches is both over-bureaucratic and makes one feel like the victim of persecution. May I be permitted to summarise my own position regarding by own C.P.D. in 2010, and the appallingly small-minded and inefficient way that this has been dealt with by the B.S.B.?

Because my mother was seriously ill throughout 2010, and my father and I were her sole carers for most of that year, I was unable to undertake anything but the minimum in C.P.D. requirement. My mother died on 18th May 2011. The only activity I was able to attend was the Middle Temple Cumberland Lodge Advocacy week-end in December 2010. I have attended similar events for many years as a trainer. Indeed, I was a founder member of Middle Temple Advocacy, being one of those who attended the introductory talk given by Judge Hampel in Gray's Inn many years ago, which has since formed the basis of all of the Inns' advocacy teaching.

I completed the "record card" and submitted it to the B.S.B. well before the deadline, containing the single entry of the Cumberland Lodge week-end. I did not for one moment address the issues of either how many "hours" this gave me, nor whether it had been properly accredited for C.P.D. purposes by my Inn. Since neither question had arisen in any previous year, I felt confident that this was both an accredited activity and that it counted for at least 12 hours.

Whilst taking a short break in the aftermath of my mother death in May, I received an e-mail from someone at the B.S.B. asking for details of the entry on my C.P.D. record-card. Frankly, I was incredulous that anyone would be unaware of what a Cumberland Lodge week-end was, since this format is used by all four Inns, and has long been regarded as a highly worthwhile event, appreciated by students, barristers and Benchers alike. My response (somewhat flippantly, admittedly) was to the effect: please contact my Inn if you have any real questions about this, and don't be so silly as to ask me about something that is so well-known.

I then received what can only be described as a threateningly offensive letter from the Chairman of the B.S.B., threatening me with all sorts of sanctions for my "failure" properly to complete my C.P.D. record card. Outraged by this, I responded by telephoning the B.S.B. I also contacted my Inn, and informed them of the situation. This brought an admission from my Inn that they had not registered that particular Cumberland Lodge week-end for accreditation purposes, and that they would do so immediately. This they then did, but the number of accredited hours was only 9.5. This still left my 2.5 hours short of the requirement.

By using the B.S.B.'s rules for those giving courses, I was able to claim an additional 2 hours for course-preparation, but this still left me 0.5 hours short. I then formally claimed the outstanding half-hour from any of the Cumberland Lodge week-end activities that were not accredited. Since I was unaware of precisely from which part of the week-end the 9.5 accredited hours came, I was unable to specify exactly what part of the week-end's activities I sought to claim the outstanding half-hour, but left it to commonsense at the B.S.B. to allocate it appropriately.

This brought the incredible reply that I was "not allowed" to claim any unaccredited hours from activities that had been accredited. I challenged this, and asked for the appropriate rule to be drawn to my attention. That was over a month ago, and the B.S.B. has failed to respond to that request.

To date, I am therefore unaware as to whether I am to be disciplined and, if so, for what offence.

This is an APPALLING way to deal with a barrister, whose loyalty and support for the profession he loves is beyond reproach, as a long-standing member of the Middle Temple Hall Committee, a founder member of Middle Temple Advocacy and Cumberland Lodge trainer and sponsor long before the B.S.B. or C.P.D. were even dreamt up.

I have given the foregoing account because I feel most strongly that the mindless and over-zealous pursuit, which has taken me a considerable amount of time to deal with, has not improved my abilities as a barrister one jot, and has taken up valuable time from dealing with other matters.

Reform is long overdue, and the petty-minded bureaucrats who administer the current C.P.D. system no doubt at vast expense (paid for by barristers) should be dismantled and something more useful done with their time.

I can supply all correspondence/e-mails should they be required.

Marc Maitland,

King's Bench Chambers,

Bournemouth.

28th October 2011.

**From: Paul Kilcoyne**

Sent: 29 October 2011 12:42

To: Consultation

Subject: CPD

Dear Sirs,

I am off the opinion that the current CPD regime is adequate. Increasing the number of hours I feel is simply going to increase the growing “CPD” industry that is developing.

I feel that the current requirement of 12 hours is ample to keep me up to date with legal developments.

Regards

Paul Kilcoyne

Paul Kilcoyne

www.tgchambers.com <http://www.tgchambers.com/>

Temple Garden Chambers

**From: Feliks Kwiatkowski.**

Sent: 31 October 2011 01:43

To: Consultation

Cc:

Subject: Bar Standards Board CPD consultation.

Attachments: BSB CPD CONSULTATION L 31 OCT 2011.doc

Please find, attached in WORD, my response to the CPD consultation.

Sincerely yours,

Feliks Kwiatkowski.

Feliks Kwiatkowski,

Kew Chambers.

Clerk: Caroline Prior.

Baroness Ruth Deech,

The Bar Standards Board. 31st October, 2011. By e-mail attachment only.

Dear Baroness Deech:

It is exquisitely ironic, but not surprising, that I am confronted with the task of drafting this letter at a time when the Government’s public position is that the burden of regulation on business needs to be eased.

I say that I am not surprised, because experience teaches anybody with an open mind that the true purpose of any bureaucracy is simply the limitless expansion of its own power. In democracies, entities such as the Bar Standards Board or the Legal Services Board are often set up with laudable objectives. It is never very long, however, before those laudable objectives are put aside, swamped or perverted in pursuit of power for its own sake.

I doubt that it is ever hard to convince yourself, if you sit at or near the head of the table of such organisations, that simply not enough is being done for the ‘public good’. There is always some new process that needs to be brought into play to further the ‘public good’. The limitless multiplication of these processes must of course mean that the people administering them, and monitoring compliance, are limitlessly worthy. They must therefore surely deserve a limitless expansion of staff, finances, public honours and the like, mustn’t they?

I write, of course, in the context of the alleged consultation of the Bar in respect of the proposal to double the burden of the activity described, in true Orwellian fashion, as ‘Continuing Professional Development’, and to switch the burden of record-keeping to the victims of that activity.

My response of principle to the consultation is this. Despite the arduous trail that must be followed from undergraduate to completion of pupillage, there may yet be arguable justification for the idea that a few years of top-up education are desirable. However, we are fully grown men and women. It is insulting, degrading and ludicrous to propose that only permanent compulsory education keeps us fit for work. If we are fit in principle to take care of the liberty, fortunes and most intimate relationships of our fellow beings, I say there must surely come a point when you have to stop treating us as brain-damaged infants, and respect us sufficiently to let us stay sharp under our own steam.

That point probably arrives five years after completion of pupillage, and certainly must have arrived ten years after the completion of pupillage. I do not see how you can begin to sell the proposition that, after thirty-odd years in the profession, at a point when some of my instructing solicitors trust me not just with their clients’ affairs, but with their own affairs, I should be faced with compulsory further education at all, let alone with a doubling of the burden.

The nonsense of the bureaucratic ‘CPD mindset’ is well illustrated by the current proposals. Reading between the lines of the background report, unpalatable truths have emerged. First, the means whereby most of us keep up to date are by reading law reports, journals, electronic newsletters and paper newsletters. Second, the formal lectures which are the backbone of the CPD system are of marginal use.

Inevitably, the bureaucratic response to unpalatable truth is to ignore or twist it. Inevitably therefore, the response here has been, not to abandon compulsory lectures, but to say that the useful voluntary educational activities that we have been engaged in must now become compulsory too, and as extras, ‘for the public good’.

Further, I note without surprise that the major educational benefits of going through the agonies involved in preparing opinions - or in fighting real cases - for real people, or of going through the pleasures of talking law with your colleagues, continue to be resolutely - and hypocritically - ignored.

Returning to the theme of irony with which I commenced, it was in one of the several electronic newsletters to which I subscribe that I learned of these proposals. It reported not only the ‘consultation’ : it reported an article by the experienced legal journalist, Alex Aldridge for the ‘Guardian’ on June 2nd, 2011. Well, that article certainly furthered my education, for Aldridge reported how the BSB disciplinary machine is chiefly occupied not with the incompetent, not with those who have disgraced themselves, nor with the medically unfit, but with persecuting those who have not completed their useless CPD obligations. It was then that the light dawned.

In January I had raised a complaint with the Bar Standards Board, which I consider to be both serious and amply justified by the copious items of evidence that I attached to it. It concerned what I see as serious breaches of those provisions of the Code of Conduct which are concerned with the fair and efficient administration of a set of chambers. Arguably, the working lives of several score barristers had been seriously impeded over the years by the situation that I had described. More than nine months have now passed since I lodged the complaint. At time of writing, the BSB has still not decided whether or not the issues that I raised merit a hearing, doubtless because its resources have been concentrated as Alex Aldridge has described.

Turning to the specifics of the present alleged consultation, my answers to the detailed questions posed are as follows.

Q1

Do you think that the fundamental approach to CPD requirements should

continue to be based on a system defined by the number of hours of

CPD undertaken annually?

**No, I think that the fundamental approach to CPD requirements should be to treat us as mature adults**. **This means discarding compulsory CPD for those with five years’ continuous post-pupillage practice.**

Q2

Do you agree with the proposed new approach for CPD that will, as a

single but five-fold strategy (1) increase the range of approved CPD

activities; (2) increase the number of CPD hours per annum; (3) raise the

standard of record-keeping; (4) simplify the system of reporting, and (5)

simplify enforcement of the CPD Regulations?

**No, I disagree with the dishonesty and hypocrisy inherent in these proposals.**

Q3

Do you agree that with the more flexible definition of CPD (Report

paragraph 117) the required number of hours should be increased from

12 to 24 hours per annum?

**No, see the answer to the preceding question.**

Q4

Do you think that (if more hours are required) acceptable activities

should include private study, relevant professional and personal skills,

and a wider range of training activities than is currently accepted?

**I refuse to validate the false premises on which this question is founded by answering it.**

Q5

Do you agree that there should be no compulsory CPD topics for

established practitioners, but a balance of activities must be undertaken?

**There should be no compulsory CPD whatsoever for established practitioners.**

Q6

Do you consider that the current system of applying for extensions of

time should be continued?

**a] See the previous answer; b] there should be extreme liberality in the handling of requests by younger practitioners for extensions of time.**

Q7

Do you agree that there should be no waivers of CPD requirements for

barristers who wish to retain their practising certificates?

**I disagree. Beyond a certain point of experience, I reject the hypothesis that fitness to practise is related to the CPD regime.**

Q8

Has the system of accreditation of CPD providers and courses by the

BSB outlived its usefulness, indicating that it should be replaced by the

proposed system of barristers recording their own ‘verifiable’ and ‘nonverifiable’ activities?

**The question is directed to the wrong issue. It is the current CPD system itself which has ‘outlived its usefulness’.**

Q9

Would a new system based on a barrister’s Declaration on application

for the renewal of the practising certificate, together with retention by the

barrister of a Portfolio recording CPD activities (for monitoring and

sampling purposes) be an effective means of ensuring CPD compliance?

**I reject the proposed imposition of yet another useless burden.**

Q10

Should the New Practitioners’ Programme be retained substantially in its

present form but based on an annual return as opposed to over a three

year period?

**I see hypothetical value in the proposition, but it is not for people of my seniority to deal with it: I defer to my younger colleagues for their views.**

Q11

Should the Forensic Accounting Course be retained substantially in its

present form (but with some improvements to content and delivery)?

**See my previous answer.**

Q12

Do you have any other comments on any of the recommendations or the

proposed new system as detailed in Chapter XVI of the Report or in the

draft Handbook?

**Yes, see the first part of this document.**

Sincerely yours,

Feliks Kwiatkowski.

**From: BACFI Secretary**

Sent: 31 October 2011 07:14

To: Consultation

Subject: CPD consultation

Attachments: BACFI CPD response 31.10.11.doc

Dear Sir / Madam

I attach the response for the CPD consultation from BACFI.

Kind regards

Sandra Janes

Administrator, BACFI

# THE RESPONSE OF THE BAR ASSOCIATION FOR COMMERCE, FINANCE AND INDUSTRY TO THE BAR STANDARDS BOARD CONSULTATION ON CONTINUING PROFESSIONAL DEVELOPMENT

# OCTOBER 2011

# INTRODUCTION

# The Bar Association for Commerce, Finance and Industry was founded in 1965 to promote the interests and professional status of barristers employed in commerce, finance and industry. BACFI is a Specialist Bar Association, affiliated to the Bar Council but operating independently to represent employed barristers practising outside chambers in

commercial organisations.

BACFI is keen to play its part as a representative Specialist Bar Association (SBA) in helping to shape the development of the Bar of England and Wales, by bringing forward the views of its members and pressing for appropriate change.

BACFI actively supports the objective of an independent and high quality bar, accessible to all.

One of BACFI's principal strategic objectives is to promote educational activities, both for its members and for all new practitioners at the employed bar.

# Preliminary remarks

Our comments do not cover other sectors of the employed bar, for example Government organisations such as the CPS, and the GLS. We understand that the Bar Council's Employed Barristers' Committee (which covers all sectors of the employed bar) may also make written submissions to you.

We make the following preliminary remarks:

BACFI members generally only give legal advice to their employer, therefore the public interest issues are not the same as for the self employed bar and for other sectors of the employed bar such as the CPS.

As we explained in our submission to the CPD Review Group last year, the size of the legal departments of member organisations range from sole counsel, one or two lawyer teams to large legal departments which operate like law firms.

Training budgets vary, but generally the commitment and sums of money devoted to training will be greater in the larger organisations. In smaller organisations training budgets will be limited and are very often narrowly targeted during cost cutting, so it is important that training is seen to add value.

The expectation of the employer is that the barrister will be up to date in his sphere of practice, but the employer does not always concern itself with how this is achieved.

In our 2010 submission, we argued that there should be a mandatory requirement for CPD and we are very pleased that the BSB intends to retain this. We support the BSB proposal to abolish the accreditation system and replace it with a system of

verification. BACFI also welcomes the BSB's decision to encourage as many potential CPD activities as possible, and to use the Bar Council's and BSB's websites to publicise them. BACFI supports the BSB’s position to leave it to the individual barrister (in conjunction with whoever he sees fit – e.g. at the employed bar with a line manager and other appropriate individuals) to determine what is appropriate and relevant CPD within the guidelines. Only the individual is in a position to know this.

We have one comment in relation to the recommendations in the Report of the CPD Working Group. In relation to para 138 and Recommendation 14, we do not agree that SBAs should be charged to advertise on the Bar Council and Bar Standards Board websites. If the BSB wishes to promote the principle of CPD, then it should encourage the advertising of relevant courses by SBAs, Inns and circuits.

In response to the specific Consultation Questions:

**Q1**. We agree that the fundamental approach to CPD requirements should continue to be defined by the number of hours of CPD undertaken annually. However, we do also support a qualitative approach as it is important that practitioner sees CPD as enhancing their practice rather than a tick box exercise

Evidence from our members indicates that they undertake far more hours of CPD type activities than the prescribed amount in order to perform their duties in a satisfactory manner. However, a prescribed amount demonstrates to employers and the public that the barrister takes CPD and keeping up to date seriously.

As we have previously pointed out, in most companies training is a key aspect of employee development. In large organisations, legal CPD is often part of a wider training and personal development programme for lawyers. In such organisations, the fact that CPD is a regulatory requirement is a helpful, ensuring that at management level there is a commitment to devote time and resource to training and importantly, to allow the lawyers to devote time to training away from commercial productivity.

In smaller organisations or in any organisations where training is not considered a priority or is less valued, it is vital to enshrine CPD as a regulatory requirement. This ensures that lay employers, internal clients and other colleagues accept that CPD is an important part of the in-house lawyer’s professional qualification (not an optional extra) and that time must be allowed for training as part of the working year. It allows the lawyer to stipulate his minimum training requirements and justify the costs of training to the employer organisation.

**Q2**. We agree with the proposed new approach to increase the range of approved CPD activities and hours per annum and that the system of reporting should be simplified.

**Qs 3, 4 and 5.** We welcome the more flexible definition of CPD to enable the practitioner (in consultation with colleagues as appropriate) to decide what his professional development requirements and priorities should be, and the inclusion of certain important “soft” skills such as practice management and other personal skills.

A balance of activities should be undertaken, but the emphasis may vary from year to year, depending on changes to law and practice, the changing nature of the employed barrister's duties and the needs of the employer. We endorse the BSB’s conclusion that any activity that serves the purposes of CPD should qualify for CPD.

**Q6.** No comment

**Q7.** We support the BSB’s position as set out in paras 128 to 132 of the report and agree that there should be no waivers of CPD requirements for barristers who wish to retain their practising certificates.

**Q8**. Yes. We have consistently argued for a system of self accreditation and strongly endorse the BSB's proposals to do away with the accreditation system and to introduce a system of verifiable and non verifiable activities.

Many BACFI members attend courses and seminars provided by firms of solicitors and other organisations which may be accredited for SRA purposes, but not for BSB purposes. The BSB's proposals would mean this would no longer cause difficulties for our members and put them at a disadvantage compared to their solicitor colleagues.

**Q9**. We support the proposed new system of the Declaration. However, the declaration suggested in the draft handbook seems unnecessarily complicated.. As far as record keeping is concerned, as long as the training together with dates and hours is recorded, then there should be no prescriptive form of record keeping. Many legal departments have their own training records and we attached a sample to our Response to the CPD Review. It would also simplify record keeping if practitioners could record their CPD online. In our Response to the Wood Review we have already referred to the example of the New York Sate Bar. It is not a means of ensuring compliance; rather we believe it is a better way to evidence compliance.

**Qs 10 and 11.** We have no specific comment on the proposal for an annual return or in relation to the forensic accounting course, although we make the comment that many employers give their legal staff extensive financial training.

However, we comment as follows on the New Practitioners (NP) section of the Consultation Paper:

* Para 163 - Gray's also runs a weekend course outside London.
* Para 164 - Inner also has a separate programme for the employed bar, as does Gray's; but Gray's will only run this when it has enough candidates to make a separate group worthwhile.
* Para 172 - The EB courses mentioned above have a completely separate set of ethics examples which are related to actual problems experienced, many of which may not be directly covered by the Code. The Ethics section of Appendix C should be amended to take account of the variety of ethics issues at the employed bar.
* Para 175 – the ATC has recently agreed a protocol for employed bar NP training and the accreditation of trainers. More generally, our position is that NP training which is not tailored to the needs of the employed barrister is of limited use. BACFI has worked with the Inns to ensure that the compulsory NP programmes for advocacy and ethics for 1-3 year employed practitioners are tailored to the needs of employed barristers. We are in dialogue with all the Inns and the ATC to achieve this. A tailored NP programme has been running for nearly 3 years at Middle Temple and Inner Temple ran their first tailored EB NPP last year. Feedback is obtained after every NPP at Middle and the practitioners tells us that the session is valuable and useful; they tell us that they learn directly relevant skills which they can take back to work to improve their day-to-day work as lawyers.

We do not agree that employed barristers should train with self-employed barristers in order to reinforce the “One Bar” concept, or in case they might switch back to being self-employed. A barrister needs skills which are of immediate relevance and in any event, skills are not developed over a weekend.

The recently approved ATC protocol relating to the provision of NP programmes for employed barristers and the training of trainers is a step in the right direction to ensuring that the NPPs for employed barristers are relevant and useful and not meaningless tick box exercises. The Inns need to do more to ensure that NPP is tailored to EB needs.

**Q12**. We are particularly concerned that the proposed new system will require the CPD requirements only to apply to barristers who have practising certificates. BACFI believes that “non practising” barristers who are offering non reserved legal services should also be regulated by the BSB and should be subject to the CPD rules. We know that at least some BACFI members who do not hold practising certificates, but who are practising in the ordinary sense of the word, undertake CPD to help them keep up to date in their field and abreast of professional developments generally. It would not be onerous for them to comply with the current or proposed CPD regimes. We believe it would also promote public confidence in these barristers if they were seen to be subject to the same training requirements as the rest of the Bar We would be pleased to discuss these issues further.

**BACFI Professional Issues Committee**

**October 2011**

**From: Savage Ayisha**

Sent: 31 October 2011 08:15

To: Consultation

Subject: CPD points increase

Dear Sirs

I would vote against increasing the CPD points and the way in which they are accredited.

Regards

Ayisha Savage

**From: Mary Gibbons**

Sent: 31 October 2011 09:57

To: Consultation

Subject: CPD Consultation

Attached are the questions and my answers to this consultation.

Q1 Do you think that the fundamental approach to CPD requirements should

continue to be based on a system defined by the number of hours of

CPD undertaken annually?

Q2 Do you agree with the proposed new approach for CPD that will, as a

single but five-fold strategy (1) increase the range of approved CPD

activities; (2) increase the number of CPD hours per annum; (3) raise the

standard of record-keeping; (4) simplify the system of reporting, and (5)

simplify enforcement of the CPD Regulations?

Q3 Do you agree that with the more flexible definition of CPD (Report

paragraph 117) the required number of hours should be increased from

12 to 24 hours per annum?

Q4 Do you think that (if more hours are required) acceptable activities

should include private study, relevant professional and personal skills,

and a wider range of training activities than is currently accepted?

Q5 Do you agree that there should be no compulsory CPD topics for

established practitioners, but a balance of activities must be undertaken?

Q6 Do you consider that the current system of applying for extensions of

time should be continued?

Q7 Do you agree that there should be no waivers of CPD requirements for

barristers who wish to retain their practising certificates?

Q8 Has the system of accreditation of CPD providers and courses by the

BSB outlived its usefulness, indicating that it should be replaced by the

proposed system of barristers recording their own ‘verifiable’ and ‘nonverifiable’ activities?

Q9 Would a new system based on a barrister’s Declaration on application

for the renewal of the practising certificate, together with retention by the

barrister of a Portfolio recording CPD activities (for monitoring and

sampling purposes) be an effective means of ensuring CPD compliance?

Q10 Should the New Practitioners’ Programme be retained substantially in its

present form but based on an annual return as opposed to over a three

year period?

Q11 Should the Forensic Accounting Course be retained substantially in its

present form (but with some improvements to content and delivery)?

Q12 Do you have any other comments on any of the recommendations or the

proposed new system as detailed in Chapter XVI of the Report or in the

draft Handbook?

Q1 In my view there is no need for CPD at all. Every practising barrister spends hundreds of hours each year in research and the preparation of skeleton arguments for court. If this is not keeping up with the cutting edge I do not know what is. If we are forced to retain this unnecessary system then my suggestion is to leave it as it is.

Q2 The idea that we should double our CPD hours is eye-brow raising. So no I do not think the new system is reasonable - just more bureaucracy.

Q3 No I most assuredly do not agree. I have read the consultation document and do not understand the source of the statement that "the public" will demand more CPD hours. What public? If a barrister is not performing adequately the answer is a simple one - he/she will not be instructed. Another 12 CPD hours will not make a difference.

Q4 The activities suggested on this list will be cumbersome and difficult to organise. I repeat that any increase in CPD hours is simply not required and adds to the burdens of a self-employed person. One alternative is to allow everyone to send in skeleton arguments to meet all CPD requirements. That would establish that the individual has spent the requisite amount of time maintaining his/her skills. Why not if the avowed purpose of CPD is that.

Q5 -Q9 No comment on the other questions.

Mary Gibbons

**From: Chris Hales**

Sent: 31 October 2011 10:31

To: Consultation

Subject: CPD consultation

Dear Madam/Sir,

On the CPD consultation, I think increasing the number of hours to 24 is excessive and unnecessary. 12 is sufficient.

Best wishes,

Chris Hales

(employed barrister)

**From: Sarah Richardson**

Sent: 31 October 2011 10:52

To: Consultation

Subject: international commitee input into CPD consultation

Attachments: IntCtteeCPDresponsedraft.docx

Dear Sir/Madam,

Please find attached the International Committee’s response to the BSB’s consultation on CPD. Please could you confirm receipt of this?

Kind regards,

Sarah Richardson

International Projects Officer

The Bar Council

289-293 High Holborn

London WC1V 7HZ

**RESPONSE OF THE BAR COUNCIL’S INTERNATIONAL COMMITTEE TO THE BAR STANDARDS BOARD CONSULTATION PAPER ON**

**“THE PROPOSED NEW MODEL FOR CPD FOR THE BAR”**

Introduction

1. The International Committee of the Bar Council welcomes the opportunity to respond to this BSB consultation paper.
2. The Committee’s role is:

a. to promote the standing and the interests of the Bar internationally;

b. to support the rule of law internationally;

c. to further the objectives above by co-operation between the Bar and legal professions abroad and by participation in the work of international legal associations and professional bodies so as to:

*i.* keep abreast of international developments;

*ii.* influence international legal developments; and

*iii.* inform the Bar accordingly.

1. In responding to this consultation paper, we propose only to set out our views on the single question relevant to our Committee’s work.

Question 4: Do you think that (if more hours are required) acceptable activities should include private study, relevant professional and personal skills, and a wider range of training activities than is currently accepted?

1. We answer this question in the affirmative. We note and welcome the following observations in the Report of the Working Group [Annex A]:

*“Above all it seems that CPD must be capable of being tailored to what the individual practitioner perceives to meet his or her needs. This implies that the range of activities permitted and available must be as flexible as possible.”* [para. 82]

*“Of course the activity must also satisfy the test of relevance: it must be relevant to the individual’s present or proposed area of practice.”* [para. 92]

1. We are aware that, when applying for CPD accreditation of events, our Committee has not been the only victim of perceived over-zealous “*pre-occupation with trying to prevent what might be called “CPD fraud” to control decisions as to what practitioners should or should not do to raise their professional standards*.”[[4]](#footnote-4) The present system presents anomalies and inconsistencies, thereby breeding resentment and discontent amongst barristers and course providers alike.
2. On a number of occasions this Committee has experienced unexpected difficulties in obtaining CPD accreditation for our seminars and workshops, and by way of recent example, particularly for our international practice development seminars for the publicly funded bar.
3. The present general definition of CPD provides:

*“CPD is work undertaken over and above the normal commitments of barristers with a view to such work developing their skills, knowledge and professional standards in areas relevant to their present or proposed areas of practice and in order to keep themselves up to date and maintain the highest standards of professional practice”.[[5]](#footnote-5)*

1. It is illogical, to say the least, that a seminar entitled Developing International Practices provided by this Committee at the Bar Council’s Annual Conference 2010 was approved for accreditation whereas an extremely similar seminar on International Criminal Practice that we held in March 2010 in Manchester was refused accreditation, even on appeal.
2. If the BSB were to adopt the Law Society of Scotland’s new provisions for accreditation, it would be unarguable that such international practice development seminars would meet their criteria of “*meeting educational aims and objectives relevant to the individual’s development; having clearly anticipated outcomes; having quality controls, for example by allowing feedback or questions to be asked; and being verifiable in the sense that independent documentary proof of participation is available*”.[[6]](#footnote-6)
3. Not least at a time when domestic publicly-funded work is contracting and barristers are being encouraged to seek new avenues of work both in England and Wales and overseas, it is beyond reasonable argument that ensuring all barristers are aware of how best to approach and manage an international practice is acutely relevant to CPD.
4. Accordingly we believe firmly that seminars and workshops such as ours which generally aim to offer advice on developing and managing an international practice should be deemed appropriate for accreditation even under the present system.
5. We note with concern, however, that the consultation paper proposes to exclude in future events directed at enhancing or developing sources or quantities of work.[[7]](#footnote-7) We fear our events that are directly relevant to a barrister’s present and proposed areas of practice might again be deemed inappropriate for CPD accreditation in any new and expanded scheme.
6. We strongly urge the BSB therefore to revisit this Table of excluded work and amend these restrictions, for we believe that it is clearly arguable alternatively that our events will lie appropriately within the new definition of approved activities which provides for development of personal and practical skills, including attending a course for the development of any other relevant personal and practice management skills.[[8]](#footnote-8) Leaving the requisite exclusion unchanged may continue to present our Committee, and no doubt other course providers, with undesirable outcomes when seeking CPD accreditation in the future. This would continue to be to the detriment of the proper education of the Bar.

October 2011

**From: Peter Cooke**

Sent: 31 October 2011 12:12

To: Consultation

Subject: An emphatic NO to an increased CPD burden

Sirs,

At a time when our incomes are declining and our work streams are under threat it is hard to imagine a more ludicrous proposal than requiring members of the bar to devote yet more time to non-earning activity. Has the BSB nothing more productive to do than of think up new ways of adding to the burdens of our beleagured profession?

Yours at the end of his tether and just about ready to quit,

Peter Cooke

Cornwall Street Chambers

85/87 Cornwall Street

Birmingham

B3 3BY

**From: Alistair MacDonald**

Sent: 31 October 2011 13:22

To: Consultation

Cc: Stuart Brown; North Eastern Circuit

Subject: Consultation on CPD proposals

I am the Chair of the Continuing Education Committee of the North-Eastern Circuit. We organise a wide variety of events, attendance at which permits barristers both on an off circuit, to achieve their CPD requirements. However, I stress that my answers are personal ones and should not be taken as indicative of the attitude of the Circuit generally.

Q1. I consider that there is no realistic alternative to a time-based requirement for fulfilment of CPD requirements. It seems to me that the approach of the accountancy profession is utterly different to that operated by all other professional organisations consulted and I cannot believe that it is capable of providing a realistic or practicable method by which CPD requirements can be monitored or enforced.

Q2. (1) I agree that the range of permitted activities should be increased as proposed. However I disagree that it should be limited so as to prevent training in interview skills, job application skills and CV writing to be counted. My reasons are that an increasing number of of professional appointments are determined by performance as assessed on an evidence-based form or by way of interview. However the application forms and the interview method are completely alien to the vast majority of barristers. By way of example, the CPS re-grading exercise was determined entirely on the basis of an evidence based form. I cannot think of anything more relevant to career development or simply maintaining your practice than training in this area.

As to CV writing, solicitors and lay clients increasingly rely on the web for information so as to choose barristers. A well constructed CV is therefore vital. Again, I cannot see any reason why training in this area should be excluded, particularly when voice coaching and presentational skills are included (which which I wholeheartedly agree).

(2) I do not agree that it is necessary to increase the number of hours of CPD training. The regime of the Bar is completely different to that of other professions. So far as advocacy skills are concerned they are conducted in the full light of public hearings at which the performance of the advocate is scrutinised by a tribunal in the form of a judge and, often, a jury. in cases of advisory work, it is conducted for other professionals in the form of solicitors mainly. They simply will not accept substandard or lazy work. If such is proffered, the market provides the sanction in that the barrister is simply not used again. There can be no greater incentive for keeping up to date than this. As it happens, it is my view that the average barrister does far more than the 12 hours anyway and, in practical terms, it probably will make little difference to the workload. It is, however, just one more bureaucratic necessity and a sop to public opinion.

(3) I do not accept that the standard of record keeping will be improved by the proposed new requirement. It is a statement of the blindingly obvious to say, for example, that a barrister attended an equality and diversity seminar in order to improve their awareness of diversity and the need for fair treatment of all. It is equally obvious that, if I go to a seminar on the new provisions on diminished responsibility and loss of control in murder as partial defences, I am going to increase my understanding of those new defences. Whilst it probably will not be an onerous requirement, it seems to me to be too silly for words to suppose that a barrister reading Criminal Law Week is doing anything other than keeping up to date with the criminal law. How does it improve record keeping or enhance the CPD that he or she has to say what is so obvious.

(4) I agree with this proposal.

(5) I agree with this proposal.

Q3. I agree with the more flexible definition of CPD. However, for the reasons I have specified, I do not think that there is any need to increase the hours requirement. What I wold support would be a requirement that half the hours should be achieved by attendance at collegiate events, for instance, and half by private study.

Q4. Yes, as specified earlier.

Q5. Yes.

Q6. Yes for the reasons specified in the paper.

Q7. I think this is a difficult question to answer. In the end, I consider that waivers should remain. That is because one of the ideas behind the paper is to trust barristers more to keep up to date and perform their CPD in ways that suit them and their practice individually. If someone is returning after a break, for whatever reason, they simply could not practise satisfactorily unless they had studied the developments in the law which had occurred between heir cessation of practice and their resumption of it. To impose a very considerable burden of CPD on such practitioners would, in m view, be a very great disincentive to resumption of practice, could have significant cost implications and, for the reasons I have specified, be largely unnecessary. Of course from the point of resumption, they would have to undertake the requisite CPD training.

Q8. Probably it has. I consider the change to verifiable and mom verifiable hours a good one.

Q9. Yes, i think it would.

Q10. Yes.

Q11. Yes

Q12. Other than those earlier specified, I have no further comments.

Alistair MacDonald

**From: Gerard Pounder**

Sent: 31 October 2011 14:36

To: Consultation

Subject: G Pounder - CPD consultation

Dear Sir/Madam,

Please accept this document as my response to the proposal to increase the annual CPD requirement from that of 12 points to 24 points. I am not writing to you on a platform of self interest. I have never had a problem getting the required 12 points. Indeed most years I exceed this figure substantially. One year I banked in excess of 50. I achieve this because I teach advocacy for my Inn, I sit and I also support various CBA courses; indeed I have participated in a number of courses. However there are others for whom 12 points is a struggle

The following are reasons why the proposed increase is unnecessary.

1. When you practise in publically funded work, such as crime, you have to keep up to date or you risk losing your cutting edge. The time you spend preparing will invariably involve legal research and thus you are, by that very exercise, continuing to develop your expertise.

2. If you are a busy practitioner, you will invariably work weekends. 24 points would equate to in excess of 4 Saturdays.

3. Although the CBA courses are modestly priced [mainly because most participants give up their time freely], the costs still mount up. Four Saturday courses are likely to cost a minimum of £100 each. Although the sum is tax deductible, it still has to be paid from earnings which are in decline due to the current restraints on public spending.

Yours sincerely,

Gerard Pounder

**From: Barbara Rich**

Sent: 31 October 2011 14:36

To: Consultation

Subject: Response to consultation

I have read the review of CPD with interest and am sorry that I only have time to submit a very brief response on a point which has been of concern to me for some time. I am a barrister in private practice who is regularly asked to present lectures and seminars within my field of expertise, which is contentious trusts and estates work and the property and affairs jurisdiction of the Court of Protection. These are both fields in which there is a strong programme of professional conferences and lectures organised both by commercial providers and specialist professional associations, as well as individual chambers and solicitors’ firms. The more prominent events are invariably well-attended by partners in substantial firms of solicitors and QCs and senior junior barristers. I generally receive very strong positive feedback on my lectures on seminars On many occasions when I have received such feedback it has included specific comment on the quality of the content reflecting the commitment of time to preparation, and the correlation between the two. This is consistent with informal discussions I have had with colleagues and audiences at professional lectures and conferences – thin and poorly-prepared material is invariably the subject of adverse comment, and the fact that it reflects inadequate preparation is always apparent.

I refer to recommendations R8 and R9. I note that the consultation recommends (R8) increasing the hours claimable for preparation for lectures to delivery time x 2, with any further hours actually spent being treated as non-verifiable private study. I do not think that this increase goes anywhere far enough towards recognising the work involved in presenting a lecture of acceptable standard for a specialist professional audience, particularly when the work includes (as is a near-universal expectation) the preparation of slides and/or notes. I believe that many people involved in higher education would regard a multiple of 10x delivery time as far more realistic for a first delivery of a lecture. I think that for the CPD authorities to make an unrealistic allowance for preparation time is to make a potentially damaging contribution to a perception amongst some barristers that a slapdash and amateurish approach to preparation of lectures is adequate, when this should not be the case.

As regards repeat delivery (R9), I disagree with the recommendation that there should be no claimable allowance for this. I never repeat material, even within a short timescale, without reviewing structure and content to ensure that it is still up-to-date and relevant for the specific audience to which it is being delivered. This process invariably takes at least 1x delivery time. The usual reason for being asked to present repeat material is that covers developments in the law which are recent/fast-moving, so it is important to undertake this review, even if the review does not bring up any material developments. If it does, then re-consideration and re-writing, which may be quite extensive, is required. Even if the CPD authorities were to operate on the assumption that no review at all was being undertaken, I think it would be wrong not to recognise the time involved in repeat delivery, as it is time spent other than on chargeable professional activities.

I hope these comments are helpful.

Kind regards

Barbara Rich

**From: Rachel**

Sent: 31 October 2011 14:49

To: Consultation

Subject: CPD

Dear Sir/Madam

I write to object to the proposed increase of CPD from 12 to 24 hours per annum.

I would submit that independent practitioners are acutely aware of their own professional responsibility to keep up-to-date with the law and do not need this further additional obligation in both time and cost.

It is simply unnecessary.

Yours faithfully

Rachel Faux

18 St John Street

Manchester

M3 4EA

**From: Brendan O Leary**

Sent: 31 October 2011 15:32

To: Consultation

Subject: CPD Points

Dear Sir/Madam

I write to object to the proposed increase of CPD from 12 to 24 hours per annum.

Independent practitioners are acutely aware of their own professional responsibility to keep up-to-date with the law and do not need this unnecessary additional obligation in both time and cost.

Yours faithfully

Brendan O'Leary

18 St John Street

Manchester

M3 4EA

**From: Jenny Underhill**   
**Sent:** 31 October 2011 16:05  
**To:** Consultation  
**Subject:** GLS response to BSB CPD Consultation attache

Dear Sir/Madam,

Please find GLS combined departmental response attached.

Best regards

Jenny Underhill

GLS Secretariat

**GOVERNMENT LEGAL SERVICE (GLS): DEPARTMENTS’ COMBINED RESPONSE TO BSB CPD CONSULTATION QUESTIONS**

*The Government Legal Service (GLS) is the organisational name which covers the legal teams based in around 30 different Government Departments. This response, therefore, reflects the views of a number of departments.*

Q1 Do you think that the fundamental approach to CPD requirements should

continue to be based on a system defined by the number of hours of

CPD undertaken annually?

The GLS does not have any fundamental difficulties with this approach.

CPD is primarily about what makes the individual a more effective practitioner. GLS lawyers are encouraged to develop transferable skills which they can apply to widely-differing types of Government work.

The GLS fully embraces the philosophy that the process of identifying, fulfilling and reviewing training and development needs should be continuous. We see no difficulty with having a common approach to the continuing education and professional development of practising barristers (whether at the Employed or Self- Employed Bar). And we are also very supportive of the BSB’s efforts to ensure that the quality of CPD offered to the profession is of a consistently high standard.

Q2 Do you agree with the proposed new approach for CPD that will, as a

single but five-fold strategy (1) increase the range of approved CPD

activities; (2) increase the number of CPD hours per annum; (3) raise the

standard of record-keeping; (4) simplify the system of reporting, and (5)

simplify enforcement of the CPD Regulations?

(1) There is support for broadening the scope of CPD. The GLS would also like to see a more specific recognition of the requirements of employed barristers. Whilst barristers have many core skills in common, a slightly different skill set is required to practise at the Employed Bar.

The GLS view is that the skills required of employed barristers should be given due weight, enabling aspects of management (eg project planning, finance) that employed barristers often need an understanding of to form part the core CPD subject matter. Barristers working in the Civil Service must demonstrate the skills set out in the Professional Skills for Government L&D framework (which includes management, leadership, client care, finance, and project and programme management skills).

(2) The proposed increase in CPD hours seems excessive. (3/4/5)

Whilst there is something to be said for requiring barristers to make mandatory annual CPD returns, to ensure that good quality CPD is being undertaken, the existing bureaucracy involved in making returns of CPD to the BSB seems far too heavy. A process which would be less burdensome and costly would be preferable. We therefore welcome the proposed simplified system whereby the barrister makes a yearly declaration and keeps a training log, which the BSB could ask to see as part of a sampling/monitoring exercise.

Q3 Do you agree that with the more flexible definition of CPD (Report

paragraph 117) the required number of hours should be increased from

12 to 24 hours per annum?

GLS departments are not convinced that broadening the scope of CPD justifies the proposed doubling of CPD hours. This appears to be excessive. This is likely to increase significantly pressures on departmental budgets and on in-house training providers.

Splitting the proposed 24 CPD hours between verifiable and non-verifiable activities may ease the burden of training provision to some extent, but it still represents a significant overall increase and there is not a clear explanation as to how the figure was reached. Even with a wider definition of CPD, with heavy workloads and pressures on resources, both GLS Departments and GLS barristers would struggle to see where an extra 12 CPD hours would come from.

Q4 Do you think that (if more hours are required) acceptable activities

should include private study, relevant professional and personal skills,

and a wider range of training activities than is currently accepted?

Whilst not wanting to go down a road that leads to the principle and value of CPD being devalued, there is strong support for the suggestion that a broader approach is adopted to what counts for CPD purposes. The key training needs for employed barristers go beyond training on pure legal developments (e.g. finance, management, leadership training, training on developing policy ideas and drivers in client departments, interview training etc).

The GLS has more recently been reviewing its training provision for GLS lawyers (barristers and solicitors) with a view to delivering high quality training more cost effectively. This may include different ways of delivery, including e-learning, podcasts and private study. We would like these activities to be able to count for CPD purposes.

Q5 Do you agree that there should be no compulsory CPD topics for

established practitioners, but a balance of activities must be undertaken?

Yes. We believe that the focus should be on developing the skills, knowledge and professional standards required in areas relevant to present and proposed areas of practice, and in order to keep up-to-date and maintain the highest standards of professional practice.

Q6 Do you consider that the current system of applying for extensions of

time should be continued?

Yes – we consider that a system to apply for extensions is necessary to take account of individual circumstances

Q7 Do you agree that there should be no waivers of CPD requirements for

barristers who wish to retain their practising certificates?

No. There is concern about the proposal that no waivers of CPD requirements will be allowed.

The proposal that the only means of lifting CPD requirements for a period of absence should be by suspending the practising certificate which is likely to be both more costly and burdensome (we understand it costs an additional £135 to have a suspension considered and granted). In relation to maternity leave this also seems potentially discriminatory and conflicts with the “one Bar” approach. The accompanying EQI Assessment refers to absence for illness or for maternity leave as “a special case”. However, it does not seem appropriate to associate the issues of illness with maternity issues.

An increase of 12 hours per year with no reduction (e.g. a pro rata reduction) seems, on its face to be an unjustifiable burden.

GLS department currently pay the practising certificate for their barristers in bulk and we are not aware that there is a practice in the GLS of suspending practicing certificates. Requiring the suspension of practising certificates (with the consequent expense and bureaucracy) seems to a disproportionate way of dealing with periods of absence and CPD. The duration of any absences, and pro-rata CPD requirements could be dealt with through the self-declaration return.

The sorts of questions we feel should be asked in relation to the requirements on those taking maternity/paternity and absence due to illness are e.g. Why is granting a suspension for reasons of paternity/maternity leave not automatic? What happens with the monies paid for the certificate in that practising year for the period of suspension? Should it be refunded? Would the cost of applying for the suspension outweigh a refund?

Q8 Has the system of accreditation of CPD providers and courses by the

BSB outlived its usefulness, indicating that it should be replaced by the

proposed system of barristers recording their own ‘verifiable’ and ‘nonverifiable’

activities?

We support the proposal to cease the accreditation of individual training courses. We would strongly support the recommendation that certain pre-approved providers like the GLS be able to self-certify their own training courses for CPD purposes, where they are BSB-approved CPD providers. This would tackle one of the main concerns we have about CPD, which is the administrative burden of the accreditation process.

However there is a concern about the new burdens which will be introduced – in particular the requirement to maintain short reflective notes in relation to non-verifiable CPD activity.

Q9 Would a new system based on a barrister’s ***Declaration*** on application

for the renewal of the practising certificate, together with retention by the

barrister of a ***Portfolio*** recording CPD activities (for monitoring and

sampling purposes) be an effective means of ensuring CPD compliance?

We feel that the bureaucracy involved in making returns of CPD to the BSB is far too heavy. GLS barristers would prefer a system where they had to keep a training log - and which the BSB could ask to see it as part of a sampling/monitoring exercise.

What is needed, from the GLS’s point of view, is a system which ensures that CPD activity is maintained and aids the learning and development and professional practice of GLS barristers, but causes the least amount of bureaucracy and process as possible. We do not think detailed returns over and above that which is required in the current return to the BSB is warranted.

Q10 Should the New Practitioners’ Programme be retained substantially in its

present form but based on an annual return as opposed to over a three

year period?

Yes

Q11 Should the Forensic Accounting Course be retained substantially in its

present form (but with some improvements to content and delivery)?

Feedback from GLS barristers is that although the standard of the course is excellent it is not necessarily relevant to all barristers. We are unclear why a course on this topic is compulsory for all barristers, if the barrister’s current practice does not call fall it.

Q12 Do you have any other comments on any of the recommendations or the

proposed new system as detailed in Chapter XVI of the Report or in the

draft Handbook?

No

**GLS Secretariat**

**28 October 2011**

**From: Michael Brady**Sent: 31 October 2011 16:09  
To: Consultation  
Subject: Extended CPD hours

Dear Sir/Madam

I have no doubt whatsoever that this supposed "consultation period" is no more than mere window dressing and that the proposed extension from 12 to 24 hours will occur irrespective of the views expressed by members of the Bar, which I anticipate are overwhelmingly against the idea. One wonders how it is that the independent Bar has managed to maintain the confidence of its professional and lay clients in the years before CPD.

I can see no justification whatsoever for the unnecessary additional inconvenience and cost of doubling the CPD requirements.

Equally I have no doubt that consideration of this response will not go beyond the sending of an e-mail as acknowledgment of receipt.

Yours etc

Brady.

**From: Rebecca Hill   
Sent:** 31 October 2011 16:22  
**To:** Consultation  
**Subject:** Increasing CPD requirements

To whom it may concern,

I write to express my view that increasing the CPD requirements from 12 to 24 hours is a) unnecessary and b) prejudicial to the junior members of the bar, particularly those who are primarily publicly funded.

The very nature of our job requires us to be constantly learning, reading new material, speaking to more senior practitioners concerning areas with which we are not familiar, et cetera. It is this ongoing learning (which far exceeds 24 hours per year) which ensures we are up to date with law and constantly developing our skills and experience. By contrast, few of the ‘accredited’ CPD programmes actually assist us in our every day practices or make us better barristers. Thus increasing the hours is pointless and unnecessary.

Secondly, an increase of the hours from 12 to 24 is prejudicial to the junior and/or publicly funded bar (who have completed their NPP). It is extremely onerous to require practitioners to find 24 hours of CPD education in order to fulfil their obligations amongst the long hours, weekends and evenings we already work. Whilst there are a number of programmes which provide large numbers of hours in one go (conferences for example) these are prohibitively expensive. Thus, whilst a senior or commercial practitioner might simply book a couple of days which provide a substantial chunk of their CPD requirement in one go, junior or publicly funded practitioners who do not have those resources must find up to 24 free or, reasonably priced, events; placing them under a disproportionate burden.

For these reasons I (and all of my contemporaries with whom I have discussed this matter) strongly resist any increase of the existing CPD requirements.

Yours faithfully,

Rebecca Hill

**From: Richard Vardom**   
Sent: 30 October 2011 15:34  
To: Consultation  
Subject:

I regard the proposal as absurd and underlines how out of touch the B.S.B is with mainstream views of the bar. The industry which is C.P.D is no doubt a vehicle for enrichment to the providers but is of limited benefit to busy practitioners who thanks to the lack of efforts by the bar council work harder and for less remuneration than ever before. Richard Vardon

**From:   
Sent:** 31 October 2011 16:37  
**To:** Consultation  
**Subject:** Consultation on CPD

Alexander Chambers' response attached

thank you

**Alexander Chambers’ Response to Consultation on CPD requirements**

1. We oppose an increase in the number of mandatory CPD hours for barristers

2. CPD requirements should be based on regulatory risk. Changes of this nature should be based on good evidence EG that increasing the mandatory number of hours would reduce the risk of negligence claims.

1. Diligent barristers look up the law every day and attend training as and when necessary. Being up-to-date with relevant statutory changes and judgments is crucial to providing sound advice and good representation, as well as compliance with the Bar Code.
2. Increasing the requirement to undertake CPD is unnecessary. It would be burdensome in terms of cost as well as time. It could have a disproportionate on barristers doing publicly funded work and/or who have lower income.
3. Crucial topics such as Ethics and Diversity training *should* be undertaken every five years or so. In order to ensure that all barristers participate this could usefully be mandatory.

**From: Richard Vardom**   
Sent: 31 October 2011 17:18  
To: Consultation  
Subject: CPD

The proposed CPD requirement is absurd and underlines how out of touch the BSB is with the mainstream views of the Bar. The CPD industry is of little assistance to busy and hard pressed members of the criminal bar and the idea that the requirements should be increased is little short outrageous. It is typical of an idea emanating from the BSB.

R S Vardon

**From: Julia Baggs**   
**Sent:** 31 October 2011 19:35  
**To:** Consultation  
**Subject:** CPD Consultation

Dear Sir/ Madam,

Please find attached on behalf of all barristers at Wilberforce Chambers, Kingston upon Hull our response to the recent consultation on CPD.

Kind regards

Julia Baggs

Education and Training Officer

Wilberforce Chambers

RESPONSE TO CPD CONSULTATION

Number of hours

The increase of hours from 12 to 24 is excessive and disproportionate. Whilst it is recognised there should be a minimum number of hours, this figure is arbitrary and onerous. It does not take into consideration variations in practice and levels of seniority and experience. Completing double the amount of CPD hours will be a very time consuming and demanding activity, which places an additional pressure on practitioners, particularly those on circuit who are already disadvantaged by the lack of suitable courses on circuit. The costs in terms of lost potential earnings to barristers on circuit will also be considerable. The costs of transport and the courses themselves will be an additional burden, particularly on junior barristers. The current level of hours is sufficient to enable established practitioners to maintain expertise and develop their practice.

Provision of activities

The increase in the range of activities available to practitioners is welcomed. Private study and research for instance should qualify as CPD. However it is disappointing that supervising a pupil does not count in some capacity (e.g. assessing a pupil’s work).

Accreditation/ Verification

The move away from the requirement to accredit courses is welcomed. Accreditation created unnecessary administration and expense. However the system of verification will still create a two tier system, valuing some activities more highly than others. It is unclear why private study and reading is non-verifiable but preparing for a lecture is verifiable.

Monitoring

The annual declaration by a barrister as to the completion of CPD requirements is recognised as a beneficial step. Such a system places trust in the individual practitioner to complete the CPD.

Further it is sensible to complete and retain a fuller record to include brief details of for instance, the content of a given course and the reasons why a practitioner selected that activity.

It should be clear however what materials practitioners should retain within a portfolio. Handouts are not always provided at activities. Perhaps a certificate or a receipt could be issued upon registration for a course?

Enforcement

The auditing approach is cautiously welcomed but it must be clear exactly what is expected. Should there be any anomalies or omissions within the portfolio, will a practitioner be allowed an opportunity to amend the portfolio or gather more evidence? It is concerning that completion of CPD will be linked to the provision of practicing certificates. Is it not sufficient that the BSB retain the ability to investigate fully in the event of non compliance?

Waivers

It is accepted that in some circumstances waivers will not be appropriate and that an extension in time for completing CPD requirements is more sensible. It is recognised that those who choose to take a career break for instance will need to update their knowledge upon returning to practice. However in circumstances such as bereavement, a waiver is the most sensible and sensitive option. The universal cost of £135 for an extension is effectively a punitive measure and should not be applied. This could be considered an indirect form of discrimination.

The Forensic Accounting Course

The course is costly and lengthy. It does not accurately reflect the type of work undertaken during early years of practice and should not be compulsory within three years.

**From:** **Andy Evans   
Sent:** 31 October 2011 21:00  
**To:** Consultation  
**Subject:** CPD Hours to Increase?

Dear Sir/Madam

I write to object to the proposed increase of CPD requirements from 12 to 24 hours per annum.

As the recipient will no doubt be aware, junior Criminal counsel are at great risk from the diversion of briefs at source to HCAs operating for both the CPS and large defence solicitors, to reduce costs. This has forced my still young practice into ever more niche and specialised areas (Road Traffic, Proceeds of Crime, Regulatory Crime) where HCAs fear to tread. Such specialisation has led to hundreds of hours of research in order to ground myself in these areas. The constant development of these areas- particularly in the area of Proceeds of Crime - means that these requirements will not pass- as a niche practitioner I'm required to update my knowledge continuously. I'll never reach the top of the mountain.   
  
However, none of this work falls within the context of "CPD".   
  
I understand the concept of Continuing Development, having worked at a Graduate level within the Civil Service before coming to the Bar and gaining much from arranging development plans in that planned, supervised and ordered environment. However, in this line of work I am deeply concerned that the CPD scheme as it stands is rarely of use to my practice. Whilst lectures and conferences are of some academic interest, it is rare that I can rely on them for my practice. Put simply, I'm spending money and time updating my knowledge of fairly peripheral areas on CPD courses, and gaining no recognition for the hours of research which I (and soon every barrister) will be required to do to remain afloat in today's competitive market.  
  
The prospect of being asked to pay for and complete yet more hours of CPD in addition to my own research is in no way attractive.

Yours faithfully

Andy Evans

18 St John Street

Manchester

M3 4EA

**From: Lucia Whittle Martin   
Sent:** 31 October 2011 22:03  
**To:** Consultation  
**Subject:** increase in required CPD for barristers

Dear Sir/Madam

I would like to object to the proposed increase in the number of CPD points required for barristers

I am a female barrister with three children. It is difficult enough to find time to work and look after children without having to spend more time “ticking boxes”.

Obviously, as a practising barrister, I ensure that I am up to date with the law and with my practise in an appropriate way. I resent the suggestion that I should need anyone looking over my shoulder, checking up on whether or not I am doing that.

In any event, as a criminal barrister I appear in court every day and am therefore monitored daily by the judiciary, by my peers, by my instructing solicitor, by my client, and by any member of the public who may care to attend.

Thank you for your attention

Lucia Whittle-Martin

**From: Aaron Dolan   
Sent:** 01 November 2011 09:22  
**To:** Consultation  
**Subject:** CBA Response to BSB CPD Consultation   
**Importance:** High

To Whom It May Concern!

Please find attached the response of the Criminal Bar Association to the recent BSB Consultation on CPD.

If you would kindly acknowledge safe receipt I would be grateful!

Best wishes

Aaron

**Aaron J Dolan**

**CBA Administrator**

www.criminalbar.com

**CRIMINAL BAR ASSOCIATION RESPONSE TO BSB CONSULTATION PAPER ON PROPOSED NEW SYSTEM FOR CPD**

The Criminal Bar Association (‘CBA’) represents about 3,600 employed and self employed members of the Bar who prosecute and defend the most serious cases across the whole of England and Wales. It is the largest specialist bar association. The high international reputation enjoyed by our criminal justice system owes a great deal to the professionalism, commitment and ethical standards of our practitioners. The technical knowledge, skill and quality of advocacy guarantee the delivery of justice in our courts; ensuring on our part that all persons enjoy a fair trial and that the adversarial system, which is at the heart of criminal justice, is maintained.

The CBA welcomes the opportunity to respond to the Bar Standards Board’s consultation paper on the proposed new system for CPD.

Q1. Do you think that the fundamental approach to CPD requirements should continue to be based on a system defined by the number of hours of CPD undertaken annually?

RESPONSE: The CBA offers qualified support to the proposals to update and revise the present system; it is difficult to see how a CPD system can function if it is not based on the accrual of time spent on professional development. Analysis of other similar professional bodies suggests that a time based system is a universal feature.

We agree that the number of verifiable hours should remain at not more than 12 but observe that the case for regulating private research and increasing the minimum number of hours by 12 has not been made out. The number of required hours should only be increased if the need for the increase is identified and articulated. There is nothing in the consultation paper which establishes any evidential basis for such a need: without it any increase would be arbitrary and unjustified.

We reject the suggestion that Criminal Practitioners are at a loss as to how to accrue the necessary CPD points; the reality is that there is a vast array of approved CPD activities available to the Bar. Increasing the minimum number of hours is offering a solution to a problem that does not exist and the inclusion of ‘private study’ seems to offer a sop in return for the suggested increase in hours.

Q2. Do you agree with the proposed new approach for CPD that will, as a single but five-fold strategy simplify enforcement of the CPD Regulations?

RESPONSE:

(1) Increase the range of approved CPD activities: We endorse the recognition of the value of ‘private study’ and welcome the suggestion that well deserved trust should be placed in the integrity and good faith of our practitioners. We also concur that barristers should be allowed greater scope in selecting the CPD programme most appropriate for their practice and that some of the formal restrictions placed on the accrual of hours should be removed.

However, the increase of hours through ‘private research’ and ‘better’ system of record keeping will simply amount to an additional (and pointless) exercise of requiring our members to log research that they already undertake as a matter of course and as an essential part of the job.

(2) Increase in number of approved CPD hours: Criminal practitioners undertake many hundreds of hours of ‘private research’ in any given year as they are confronted with novel legal problems (both evidential and procedural) on a regular basis and are expected to keep up to date with current case law; we suggest that this is the very reason why CPD hours should not increase. The suggested 12 hour increase would represent a very small proportion of the time spent on researching cases on a day to day basis; many criminal practitioners could fulfil the extra requirement in the preparation of a single case which would defeat the purpose of continuing education.

Alternatively, the additional 12 hours could be made up by reading Criminal Law Review once a month (something which would take more than an hour if read cover to cover); most practitioners regularly dip into a variety of current publications to update their knowledge (and spend rather longer than an hour doing it).

This private research is presently carried out by our members in their own time and without supervision by their regulator. The proposal to regulate and certificate this voluntary exercise is difficult to reconcile with the suggestion of increased trust in the integrity and good faith of the individual practitioner; it is a proposal which may be met with dissatisfaction and resentment by an already disgruntled profession.

(3) Raise the standard of record keeping: The current system places an onus on barristers to submit their completed records accurately and on time. Whilst all of our members would easily be able to fulfil the increased CPD hours, the revised system will require busy practitioners to devise an acceptable system to log unverifiable time spent in private research, thereby unnecessarily adding to the administrative burden of CPD compliance.

(4) Simplify the system of reporting: subject to (3) above, we strongly support the simplification of reporting.

(5) Simplify enforcement of CPD Regulations: we support the simplification of enforcement of the regulations.

Q3. Do you agree that with the more flexible definition of CPD (report para.117) the required number of hours should be increased from 12 to 24 hours per annum?

RESPONSE: No, for the reasons given at (2) above we oppose any increase in the required number of hours; in fact, this proposal will change and improve nothing; all it amounts to is the regulation of private study already undertaken by our members which may undermine the sense of professional trust and responsibility at the Bar.

Q4. Do you think that (if more hours are required) acceptable activities should include private study, relevant professional and personal skills and a wider range of training activities than is currently accepted?

RESPONSE: Yes.

Q5. Do you agree that there should be no compulsory CPD topics for established practitioners, but a balance of activities should be undertaken?

RESPONSE: Yes. ‘There should be no one size fits all’ topics for CPD; the criminal practitioner is best placed to decide which areas are most relevant and useful to his/her practice.

Q6. Do you agree that the current system of applying for extensions of time should be continued?

RESPONSE: Yes, although there may be some merit in a limited Singapore type ‘carry back/carry forward scheme’ to reduce waiver/extension applications in appropriate cases.

Q7. Do you agree that there should be no waivers of CPD requirements for barristers who wish to retain their practising certificates?

RESPONSE: Yes.

Q8. Has the system of accreditation of CPD providers and courses by the BSB outlived its usefulness, indicating that it should be replaced by the proposed system of barristers recording their own ‘verifiable’ and ‘non-verifiable’ activities?

RESPONSE: No, at present barristers can check which activities are accredited through the BSB and ‘verifiable’ activities can be monitored in the same way.

Q9. Would a new system based on barrister’s *Declaration* on application for the renewal of the practising certificate, together with the retention by the barrister of a *Portfolio* recording CPD activities (for monitoring and sampling purposes) be an effective means of ensuring CPD compliance?

RESPONSE: Yes, subject to 3 above; but we do not accept that the submission of a *Portfolio* is a necessary or effective guarantee of the quality of CPD that is being undertaken.

Q10. Should the New Practitioners Programme be retained substantially in its present form but based on an annual return as opposed to over a three year period?

RESPONSE: Yes.

Q11. Should the Forensic Accounting Course be retained substantially in its present form (but with some improvements to content and delivery)?

RESPONSE: The Forensic Accounting Course is seriously wasted on very junior practitioners undertaking the NPP and if it is felt to be a necessary part of a barrister training it could and should be deferred. However, the rationale for making a special case of accounts analysis rather than medical or some other form of expert analysis has not been made out and there is a strong argument for its abolition. The present course is costly and is not appreciated by the majority of the attendees who see it as irrelevant to their level and/or type of practice. If the course is to remain the provision of the course for free, as looked into by a least one circuit in 2007, should be further seriously explored. There would be many forensic accountants who would be willing to offer the course in this way given the opportunity it would present to market their firm.

Q12. Do you have any other comments on any of the recommendations or the proposed new system as detailed in Chapter XVI of the Report or in the draft Handbook?

RESPONSE: No.

**From:** **James Ingham**   
**Sent:** 01 November 2011 17:06  
**To:** Consultation  
**Cc:** Martin Bowdery QC  
**Subject:** BSB Consultation Paper on CPD

Please find enclosed the TECBAR Committee Response to your Consultation paper.

Apologies for the lateness of delivery,

Kind regards,

Martin Bowdery QC

James Ingham

Assistant Practice Manager

**Part 3 CONSULTATION QUESTIONS**

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

|  |  |
| --- | --- |
| Q1 Do you think that the fundamental approach to CPD requirements should continue to be based on a system defined by the number of hours of CPD undertaken annually?  Q2 Do you agree with the proposed new approach for CPD that will, as a single but five-fold strategy (1) increase the range of approved CPD activities; (2) increase the number of CPD hours per annum; (3) raise the standard of record-keeping; (4) simplify the system of reporting, and (5) simplify enforcement of the CPD Regulations?  Q3 Do you agree that with the more flexible definition of CPD (Report paragraph 117) the required number of hours should be increased from 12 to 24 hours per annum?  Q4 Do you think that (if more hours are required) acceptable activities should include private study, relevant professional and personal skills, and a wider range of training activities than is currently accepted?  Q5 Do you agree that there should be no compulsory CPD topics for established practitioners, but a balance of activities must be undertaken?  Q6 Do you consider that the current system of applying for extensions of time should be continued?  Q7 Do you agree that there should be no waivers of CPD requirements for barristers who wish to retain their practising certificates?  Q8 Has the system of accreditation of CPD providers and courses by the BSB outlived its usefulness, indicating that it should be replaced by the proposed system of barristers recording their own 'verifiable' and 'non-verifiable' activities?  Q9 Would a new system based on a barrister's ***Declaration*** on application for the renewal of the practising certificate, together with retention by the barrister of a ***Portfolio*** recording CPD activities (for monitoring and sampling purposes) be an effective means of ensuring CPD compliance?  Q10 Should the New Practitioners' Programme be retained substantially in its present form but based on an annual return as opposed to over a three year period?  Q11 Should the Forensic Accounting Course be retained substantially in its present form (but with some improvements to content and delivery)?  Q12 Do you have any other comments on any of the recommendations or the proposed new system as detailed in Chapter XVI of the Report or in the draft Handbook?  A12.1 TECBAR only agree to the increase in the number of CPD hours if the proposed relaxation in how CPD hours are assessed goes ahead.    A12.2 With regard to paragraph 93 of Section X “A More Flexible CPD” which states:  “93. It is also common ground that CPD requirements must be supported by a visible and practical system of audit. But it has to be accepted that, however, skilfully the rules might be drafted, there will always be some malpractice at the margin, even with the most rigorous “evidence-based” system. It would therefore be a mistake, in our view, to allow a pre-occupation with trying to prevent what might be called “CPD fraud” to control decisions as to what practitioners should or should not do to raise their professional standards.”  We agree.  Furthermore, we can give an example of a “pre-occupation... to prevent what might be called “CPD fraud”:  - To our dismay, TECBAR was initially unable to obtain CPD accreditation for a talk to members by Sir Geoffrey Nice QC, Vice Chair of BSB updating members on the role of the BSB and the changes being proposed to regulations and practice rules. TECBAR could only obtain CPD accreditation on appeal. | Yes  Yes  Yes  Yes  Yes  Yes  Yes  Yes  Yes  Yes  Yes  Yes |

**From:** **alexrobinson@hsbc.com**   
**Sent:** 02 November 2011 16:25  
**To:** Consultation  
**Subject:**   
Dear Sir / Madam   
Apologies, I did not receive the email on this consultation.   
I would like to register my views however, on increasing CPD requirements. With respect to the committee recommending increasing this requirement, I very much disagree with the proposal to increase the CPD requirement. In my view the CPD requirement should be reduced or scrapped and certainly not increased. It serves no useful purpose having lawyers spend time on high-level or irrelevant courses to fulfil this time requirement.   
I'd be happy to discuss further if this would be of assistance.   
I apologize for this late submission, but do not recall having received the email requesting responses and have received it today from a colleague.   
Thanks and regards   
Alex  
  
**Alex N ROBINSON**   
ASSOCIATE GENERAL COUNSEL | GLOBAL BANKING AND MARKETS | HSBC BANK PLC

**From:** **Chris Hales**    
**Sent:** 03 November 2011 09:57  
**To:** Ruth Swinden  
**Subject:** RE: CPD consultation

Thanks Ruth. Perhaps I should have added that I specialise in health and safety and public law and to find course over 24 hours on that every year might be OTT.

Best wishes,

Chris

**YOUNG BARRISTERS’ COMMITTEE OF THE BAR COUNCIL RESPONSE TO BSB CONSULTATION PAPER ON PROPOSED NEW SYSTEM FOR CPD**

Introduction

1. The Young Barristers’ Committee (YBC) is one of the Bar Council’s main representative Committees and it represents barristers who are under 10 years’ Call. Led by a Chairman and Vice-Chairman, it comprises elected members of the Bar Council (employed and self-employed barristers) under 7 years’ Call, as well as barristers who are co-opted to ensure representation from different areas of practice and from all Circuits. Its membership is therefore diverse and representative.

2. This is the Response of the YBC to the BSB’s Review of Continuing Professional Development: Consultation Paper on the proposed new system for CPD. It addresses each of the questions posed in turn.

**Q1. Do you think that the fundamental approach to CPD requirements should continue to be based on a system defined by the number of hours of CPD undertaken annually?**

RESPONSE: For a CPD system to function it must be enforceable. It is difficult to conceive of a system that did not depend on the accrual of hours unless attendance at certain events were to be made compulsory; such an approach would be expensive, and difficult to organise, without any of the benefits afforded by the flexibility of the current system. Accordingly the time based system is supported.

**Q2. Do you agree with the proposed new approach for CPD that will, as a single but five-fold strategy simplify enforcement of the CPD Regulations?**

RESPONSE:

(1) Increase the range of approved CPD activities: There is currently a very wide array of means by which CPD points can be achieved and the YBC would be surprised if the BSB received many complaints about the paucity of available approved activities. That being said plainly any drive towards broadening the range of approved activities is welcomed.

(2) Increase in number of approved CPD hours: The YBC does not accept that any evidence has been advanced by the BSB indicating a need for an increase in hours. Given that such an increase would impose a considerable extra burden on barristers, it is reasonable to expect a solid and detailed explanation in support of the suggestion that a doubling in the number of hours is necessary; none has been proffered. In the circumstances, we take the view that the proposal is arbitrary and unjustified without any articulated extra benefit to consumers.

Broadening the range of approved activities should not be regarded as a reasonable trade-off for increasing the number of hours that barristers must complete.

(3) Raise the standard of record keeping: Record keeping would seem to be the preserve of the BSB rather than of individual practitioners. At present the burden on the practitioner amounts to a requirement once a year to submit a signed form to the BSB confirming how that year’s CPD requirements have been met. It is a simple arithmetical exercise that does not entail the demonstration of the qualitative value of CPD. There is good cause for this. CPD is only accredited for events that meet a certain standard; Assessment of the virtue of a particular CPD activity is a completely subjective exercise that would be costly to perform and immensely unpopular. QASA and the CPS’ grading scheme are mechanisms by which, the Criminal Bar at least, will be subject to assessment.

The YBC firmly rejects any proposal to impose a further administrative burden on practitioners beyond that which currently pertains. In particular the suggestion that some form of self-assessment should form part of the CPD requirements is objected to as being an asinine and pointless demand.

(4) Simplify the system of reporting: If the BSB is keen to reduce the administrative burden of supervising the CPD scheme a sensible suggestion would be for every practising barrister to hold an electronic account with the BSB so that as points are

accumulated the record could be updated and when the 12 hours have been completed the record could be submitted. Paper based reporting is wasteful of resources, harder to administer and probably more likely to result in non-compliance.

(5) Simplify enforcement of CPD Regulations: Plainly the YBC supports a desire to simplify the enforcement of CPD provided it does not impose a burden on individual barristers beyond that which already applies.

**Q3. Do you agree with the more flexible definition of CPD and that the required number of hours should be increased from 12 to 24 hours per annum?**

RESPONSE: No, there is nothing wrong with the present requirement of 12 hours. Such an increase would only increase the burden placed on practitioners, without providing any obvious benefit to the consumer.

**Q4. Do you think that (if more hours are required) acceptable activities should include private study, relevant professional and personal skills and a wider range of training activities than is currently accepted?**

RESPONSE: If private study was not an acceptable activity for the accrual of CPD at the time the scheme was launched it is difficult to understand what the rationale is for making it so now. The benefit of attending an event can be measured by the fact that the event has been attended. The benefit of private study is not susceptible to measurement. We would remind the BSB that private study is an integral part of any barristers’ practice as it is. Legal arguments, skeleton arguments, sentencing provisions etc all need to be researched on a regular basis simply to enable a barrister to do their job properly and effectively.

**Q5. Do you agree that there should be no compulsory CPD topics for established practitioners, but a balance of activities should be undertaken?**

RESPONSE: Yes.

**Q6. Do you agree that the current system of applying for extensions of time should be continued?**

RESPONSE: Yes.

**Q7. Do you agree that there should be no waivers of CPD requirements for barristers who wish to retain their practising certificates?**

RESPONSE: Yes.

**Q8. Has the system of accreditation of CPD providers and courses by the BSB outlived its usefulness, indicating that it should be replaced by the proposed system of barristers recording their own ‘verifiable’ and ‘non-verifiable’ activities?**

RESPONSE: If accreditation provides an income stream to the BSB there is a sensible concern that this income will have to be otherwise recouped. Accreditation ought to ensure that totally specious activities do not count towards CPD. The terms verifiable and non verifiable are also subjective; Accreditation should act as a quality assurance mechanism.

**Q9. Would a new system based on barrister’s Declaration on application for the renewal of the practising certificate, together with the retention by the barrister of a Portfolio recording CPD activities (for monitoring and sampling purposes) be an effective means of ensuring CPD compliance?**

RESPONSE: No. The BSB should continue to keep records of CPD compliance. Monitoring and sampling sounds like a fig leaf for shifting a considerable administrative burden onto members of the Bar with no advantage to the consumer.

**Q10. Should the New Practitioners Programme be retained substantially in its present form but based on an annual return as opposed to over a three year period?**

RESPONSE: We do not believe that it is necessary to change the NPP to an annual return. No evidence has been presented by the BSB that would suggest that barristers within 3 years of practice are failing to meet their CPD requirements under the current 3 year return system. The virtue of the NPP is that it allows new practitioners sufficient time in which to accrue their more onerous CPD requirements. Annual returns would not confer any obvious advantage to the BSB (indeed, it is arguable that in fact it would simply lead to an increase in administration and cost) but would be inconvenient for new practitioners.

**Q11. Should the Forensic Accounting Course be retained substantially in its present form (but with some improvements to content and delivery)?**

RESPONSE: There is a divergence of opinion as to the level of benefit derived from the Forensic Accounting Course. Whilst some young barristers found the course helpful (particularly, it would seem, those practising family law), others found that the knowledge obtained would be of little use to their practice at all. For example, criminal

practitioners are unlikely to be instructed in cases that would require knowledge of forensic accounting within the first three years of practice. It would be preferable if the time for completion of the course could be extended, for example to seven years’ Call. That would afford greater flexibility for practitioners to undertake the course at a time when they are likely to derive the greatest benefit from it.

**Q12. Do you have any other comments on any of the recommendations or the proposed new system as detailed in Chapter XVI of the Report or in the draft Handbook?**

RESPONSE: No.

**October 2011**

**The Young Barristers’ Committee**

**Response of the Advocacy Training Council to the CPD Consultation**

1. The Advocacy Training Council discussed its response to the CPD Consultation at its meeting on 11 October 2011.
2. The ATC focussed its attention on the recommendations in the consultation which specifically referred to the ATC, advocacy training and the NPP. Its conclusions are as follows:
   1. The ATC endorses the conclusion in paragraph 111 of the consultation document that CPD after the NPP should not contain any compulsory element of advocacy training.
   2. The ATC agrees with the recommendations in paragraphs 172 and 173 of the consultation document that there should be an expansion of the remit of the ethics programme to include wider consideration of the relationship between barrister, their instructing solicitors and lay clients and consideration of the relationship between the Bar and the general public. The ATC feels that this is particularly appropriate in the light of the introduction of new business structures. The ATC has initiated work by two of its members to recommend how the ethics programme might be suitably developed and improved.
   3. The ATC agrees with the recommendation in paragraph 174 of the consultation document that new practitioners should be required to undertake the same number of hours (i.e. 24) in each of their three years of practice and not be permitted to discharge their obligation in a single year. There was some discussion as to whether or not new practitioners, particularly those struggling at the publicly funded Bar, should be allowed an exception to carry forward or carry back hours during this 3 year period; this would enable them to benefit from concentrated CPD (for example, the significant number of hours gained on the one week Keble course). However, it was felt that an exception such as this would detract from the overall purpose of the new annual 24 hour provision and it was therefore not supported.
   4. The ATC agrees with the recommendation in paragraph 174 of the consultation document that the requirements for new practitioners should remain compulsory and all such hours (including the 9 advocacy hours) should count towards the total of 72 over the first three years, and be regarded as “verifiable”.
   5. The ATC agrees with the recommendation in paragraph 175 of the consultation document that there should be closer co-operation between the BSB and the ATC in co-ordination and oversight of the NPP. It also endorses the recommendation that the BSB should establish a forum of discussion between the various expert providers to enable ideas to be more actively exchanged and good practice to continue and develop.

**From: Tim Green**Sent: 07 November 2011 15:31  
To: Consultation  
Subject: Cpd consultation

Please do not increase the CPD requirements for the Bar.

Time spent on CPD is time a self-employed person cannot be working. CPD training is not just expensive in time, it has to be paid for. Thus increasing CPD requirements simply adds extra burden on self-employed barristers when their income for any person undertaking publicly funded work is diminishing. 12 hours is already a considerable burden.

Barristers are not only influenced by regulation but by markets. If a barrister is not competent, he is unlikely to be instructed and so be without income. This combined with the fact that court work is carried out in public or in view of fellow professionals and Judges acts a powerful check on professional standards. In fact I ask if there is any other profession whose skills and work are so obviously open to scrutiny. This acts to raise professional standards. Extra CPD means time and money spent on professional training but does not actually guarantee better service.

Kind regards

Tim

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**EMPLOYED BARRISTERS’ COMMITTEE**

**EMPLOYED BARRISTERS’ COMMITTEE OF THE BAR COUNCIL RESPONSE TO BSB CONSULTATION PAPER ON PROPOSED NEW SYSTEM FOR CPD**

Introduction

1. The Employed Barristers’ Committee (“EBC”) represents the 3,029 barristers who practise in employment and hold practising certificates. This group of barristers is also responsible for electing the 14 employed members of the Bar Council. The EBC membership is drawn from all areas of employed practice and demonstrates the diversity of this sector of the Bar. Members include elected members of the Bar Council, barristers working in government, industry, commerce, finance and in solicitors firms as well as co-opted members some of whom are self-employed. Membership consists of barristers who conduct reserved legal activities and therefore require practising certificates but also barristers who chose to hold practising certificates without conducting reserved legal services.
2. Many senior EBC members also hold substantial management positions which they combine with their employed legal practice. Such experience is complemented by management focussed learning which the SRA currently accredits for CPD and the BSB does not. Consequently EBC members in senior management roles are particularly well placed to comment on the proposed enhanced category of ‘Development of personal and practical skills’ which it is proposed will be recognised under the new system. There is nonetheless an acknowledgement of which management skills make one a better lawyer, and which management skills simply make one a better manager.

General Observations

1. The EBC welcomes the general principles that underpin the CPD review and proposed new system in as much as they represent a new approach to CPD which it is hoped will play its part in improving standards within the profession. The EBC recognises and agrees with the four purposes that CPD is intended to achieve: development and improvement of professional knowledge and skills, keeping up to date, maintaining the confidence of both clients and the public and creating a collegiate ethos to enhance the dissemination of knowledge, skills and good practice. In particular the EBC welcomes the proposal that is enshrined within the new system: that the Bar should follow other professions and place more trust in the integrity of practitioners, allowing them greater freedom in selecting the CPD programme that is tailored for them and their practice in order to allow them to practice with maximum efficiency.
2. The EBC acknowledges that in any profession that there will always be a small number of members who will seek ways of evading a compulsory system of CPD but taking into account that the aim of CPD is development, rather than quality assurance, it is in our view right that the views and needs of the honest majority should prevail. For too long the CPD system has focussed on identifying and punishing those who seek to avoid it rather than on the greater majority which is already wedded to the principle of self-improvement and development. Appropriate strictures and sanctions for the non-compliant should simply encourage involvement with CPD and proportionately address those who fail to comply.
3. It is important to recognise that most employed practitioners engage each year in many activities which develop their legal skills and knowledge without much concern for the number of hours such tasks occupy. For this reason the EBC welcomes particularly the inclusion of legal reading and private study within the enlarged new categories of acceptable CPD. This development is particularly welcome to members of the employed bar where cuts have greatly reduced attendance at external courses and without which the proposed increase in CPD hours might have caused financial hardship and a disproportionate additional burden on private life.
4. The EBC believes that it is right to have CPD supported by a visible practical system of audit and that this should cease to be dominated by the small number of practitioners who are unlikely to ever fully comply. We welcome the prominence given to the concept of relevance within the proposed new scheme and the flexibility that the enlargement of the approved categories will make possible. A continuation of some courses that are accredited and some that are not assists with flexibility.
5. While the EBC supports the general scheme of the proposals and the principle that being a successful barrister must include more than simply keeping up to date on substantive law there remains a body of opinion within the EBC that believes strongly that CPD which relates directly to legal knowledge and skills should be given prominence in the overall scheme because it is that which maintains our professionalism as lawyers. This defined group, many of whom hold significant management responsibility, take the view that recognition of activities which are not related to legal skills and knowledge would be an unwelcome dilution of CPD.
6. It is perhaps a measure of the anticipated flexibility and the newness of the approach in the new scheme that it will be possible for the individual to tailor their own CPD to reflect the prominence they think should be given to legal rather than other related development. Therefore, although as a whole the EBC welcomes the widening of the categories of CPD because it will give a more accurate picture of the development that barristers genuinely undertake, there remains within the employed Bar strong feeling that the primary purpose of CPD must be to demonstrate that barristers know the law, including practice and procedure and remain up to date with developments.
7. Whether it might be said that is an approach which is far too basic and akin to mere maintenance is debatable. Many consider that to be effective CPD must contribute to a concept of personal improvement which encompasses not only up to date legal knowledge but also practical experience and effective management of personal time and casework.

**Q1 Do you think that the fundamental approach to CPD requirements should continue to be based on a system defined by the number of hours of CPD undertaken annually?**

It is easy to understand the attraction of the hour based system. It is a simple concept to grasp, easy to provide for and simple to monitor. However it is also clear that it does not provide a true reflection of the developmental activities that many barristers already undertake. Responsible practitioners should be able to easily meet the number of required hours particularly now that the enlarged categories of CPD will count and the illustrative lists will allow them to include much of the study that most do to keep up to date on the law in their area of practice. While an hour based system is by its nature likely to be more open to abuse than an evidence system where barristers must demonstrate exactly what they have learned and how they have developed, we hope that this confidence in the professionalism of the bar will allow a system based on honourable declaration to continue.

Many employed barristers find it hard to conceive of a system where hours are not the standard measure because of the auditing difficulties such an alternative system could create.

**Q2 Do you agree with the proposed new approach for CPD that will, as a single but five-fold strategy (1) increase the range of approved CPD activities; (2) increase the number of CPD hours per annum; (3) raise the standard of record-keeping; (4) simplify the system of reporting, and (5) simplify enforcement of the CPD Regulations?**

In general terms the EBC agrees with the proposed new approach for CPD but makes the following observations in respect of each category:

(1)The EBC agrees that the range of approved CPD activities should be increased because of the flexibility this will bring to the system. A flexible system will allow barristers to decide for themselves where the emphasis should lie in their developmental choices. Those who believe that their CPD interests are best met by activities based on law will be able to achieve this as will those who believe that such legal development should be tempered by training on practice management and other relevant disciplines.

(2) The EBC does not believe that that it is necessary to increase the numbers of CPD hours particularly when there is no credible rationale for the increase. The EBC would wish to see evidence in support of this change to demonstrate why 12 hours is considered to be insufficient and why it is supposed that 24 hours would improve standards. However, we do concede that other professions have higher CPD requirements.

(3) The EBC agrees that the standard of record keeping should be raised and welcomes the introduction of a CPD declaration which requires the practitioner to set out that sufficient hours have been completed, the relevance of the activities undertaken, and that a balance and range of activities has been achieved in order to keep skills and knowledge up to date. While the EBC recognises that the idea of a CPD portfolio containing a reflective account of completed CPD is sound there are concerns that the requirement to gather and keep evidence of verifiable activities may be problematic. We believe that the requirement that courses and activities should be counted according to actual time taken rather than rounded up or down is a distinct improvement on the current system.

(4) The EBC welcomes the fact that in the first instance practitioners will only be required to submit the CPD declaration to the regulator but believes that keeping and maintain the portfolio together with the documentary evidence which substantiates it for three years is too long.

(5) The EBC welcomes the new system of enforcement which will be linked to the right to practise.

**Q3 Do you agree that with the more flexible definition of CPD (Report paragraph 117) the required number of hours should be increased from 12 to 24 hours per annum?**

While the EBC believes that defining CPD with reference to the number of hours is an artificial device which can never genuinely reflect the true extent of development undertaken it is none the less an effective means of monitoring compliance and enforcement. The EBC has seen no evidence to support the contention that 12 hours CPD has led to a reduction in standards nor that an increase to 24 hours will of itself drive standards up. Although the EBC remains unconvinced that an increase in CPD hours is justified, it acknowledges that the potential disadvantages to barristers employed in areas where there are financial cuts will be mitigated by the widening of acceptable activities and inclusion of previously unacknowledged activities such a private study and reading law reports.

**Q4 Do you think that (if more hours are required) acceptable activities should include private study, relevant professional and personal skills, and a wider range of training activities than is currently accepted?**

The EBC welcomes the widening of the categories of activities that should count for CPD and believes that this approach is really the only justification for the increase in hours.

**Q5 Do you agree that there should be no compulsory CPD topics for established practitioners, but a balance of activities must be undertaken?**

The EBC welcomes the proposal that there should be no compulsory CPD topics for established practitioners. It is the EBC’s view that compulsory topics would be likely to lead to duplication and resentment. One of the strengths of the new system is its flexibility and the obligation it places on barristers to undertake a balance of relevant CPD activities. As the new approach designed to be flexible and above all subjective the EBC considers that compulsory topics would be unhelpfully prescriptive.

**Q6 Do you consider that the current system of applying for extensions of time should be continued?**

Yes, particularly if there is going to be a link between CPD compliance and authorisation to practise. This is particularly so in light of the new offences created by the Legal Services Act 2007.

**Q7 Do you agree that there should be no waivers of CPD requirements for barristers who wish to retain their practising certificates?**

There should be no waivers of CPD requirements for barristers wishing to retain their practising certificates. It is important that all practising barristers are able to demonstrate that they are up to date on the law and necessary skills required in their area of practice. CPD is also an effective means of keeping in touch with the profession generally and the process for allowing extensions of time should be sufficiently flexible to cover most situations. The EBC accepts that practitioners who have been out of practice for a period of time are more likely to require and welcome the opportunity to get back up to date in their area of practice.

**Q8 Has the system of accreditation of CPD providers and courses by the BSB outlived its usefulness, indicating that it should be replaced by the proposed system of barristers recording their own ‘verifiable’ and ‘non verifiable’ activities?**

The EBC believes the system of accreditation of CPD providers and courses has outlived its usefulness. While the EBC does not object to the new categories of verifiable and non verifiable it is hard to see what real purpose such a distinction serves. The requirement for relevance, balance and variety within the new system of CPD should of itself be sufficient to prevent barristers from undertaking limited and repetitive activities which fail to meet that definition.

**Q9 Would a new system based on a barrister’s Declaration on application for the renewal of the practising certificate, together with retention by the barrister of a Portfolio recording CPD activities (for monitoring and sampling purposes) be an effective means of ensuring CPD compliance?**

The EBC welcomes the fact that the new system will place more trust in the integrity of the practitioner and believes that it will be an effective means of ensuring compliance because of the link it will have with the process of authorisation to practise and the issue of practising certificates. However the EBC considers that the requirement to maintain the portfolio and documentary evidence for a period of three years is too long.

**Q10 Should the New Practitioners’ Programme be retained substantially in its present form but based on an annual return as opposed to over a three year period?**

The EBC agrees that the NPP should be retained substantially in its current form and welcomes the suggestion that the CPD hours it attracts should be equally spread over the first three years of practice. The EBC agrees that a system which allows new practitioners to undertake the full allocation of CPD in one year allowing them 2 years without CPD goes against the principles and purpose of CPD and should be prevented. There is some concern that the suggested numbers for NPP have not changed proportionately with other suggested CPD.

**Q11 Should the Forensic Accounting Course be retained substantially in its present form (but with some improvements to content and delivery)?**

The EBC believes that the FAC should be retained in its current form but with some improvements to content and delivery. In particular the EBC would welcome the idea that aspects of the course could be designed to reflect particular areas of practice. The course should also be followed up on so that practical use of it during practice is seen to be understood and tested to some degree.

**Q12 Do you have any other comments on any of the recommendations or the proposed new system as detailed in Chapter XVI of the Report or in the draft Handbook?**

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**THE HONOURABLE SOCIETY OF THE INNER TEMPLE**

**Response of Inner Temple to the Bar Standards Board’s Consultation Paper on**

**the proposed new system for CPD**

Overall, we strongly support the BSB’s proposal to revise and update the system of CPD.

Accredited/Verifiable Activities.

We understand and accept the reasons given for abandoning the system of accreditation of CPD. Whilst the Inn as a provider of CPD is committed to offering courses and lectures of a high standard, we accept that it is difficult for the BSB to regulate the quality of CPD.

We also agree that the required number of hours for verifiable activities should remain at not more than 12.

The proposed increase of 12 hours of unverifiable activities.

We believe that this proposal is less persuasive.

The essential suggestion is to add 12 hours to the current annual requirement, to be provided by unverifiable activities, particularly private research.

First, we are not aware of any public or professional demand for an overall increase in CPD hours nor of evidence of any such need. We recognise that it can always be argued that in theory any increase of CPD will operate in the public interest, but that argument cannot be a substitute for a practical and evidence-based assessment as to whether an increase is really justified. There is an historical record to draw upon. CPD has been in place for the Bar for over 5 years, long enough for any evidence of public dissatisfaction with the number of hours to emerge. No such evidence was identified in the Working Party report. The current 12 hour requirement is very much in line with comparable professions; for example, the Faculty of Advocates requires 10 hours of accredited CPD, less than the Bar’s current requirement. Furthermore, the proposal of the Working Party to allow the extra 12 hours to be completed by unverified private research tends to support the conclusion that there is no public demand for an increase. If there had been a real sense of a deficiency in the CPD requirements at the Bar, the call would surely have been for an increase in the hours spent in verifiable activities, such as lectures, seminars and the like, rather than of 12 hours of “unverifiable” and “private” research (especially when it is recognised that 12 hours is a tiny fraction of a barrister’s annual research time – see below). We do not therefore support the conclusion that the CPD hours requirement should be increased at the moment. At the same time, we do feel strongly that the CPD hours issue should be kept under regular review to meet changing conditions and expectations.

Second, the proposal to regulate private research would be a considerable departure from the current system. Presently, the system covers education provided by external providers, typically lectures, courses, moots etc. The suggested change is very much more invasive, seeking to regulate what barristers do by way of research in their own private time. There are a number of difficulties with the proposal:

1. Is there a useful distinction between types of research (private and non-private)? We believe that the special patterns of work at the Bar should be taken into account. In the normal course of their work, barristers are daily faced with complex and novel legal, procedural and evidential problems which require in-depth research, more so than in other professions (including solicitors). Typically they may do many hundreds of hours of research each year, both related to cases in which they are instructed as well as private research. The suggested 12 hours of “required” private research is likely to be a tiny fraction of the time that a barrister will spend each year in research overall. Each barrister’s development is the sum of all the research, with work research likely to provide the much greater contribution. We doubt the usefulness of denoting “private research” as a separate category and requiring a minimum number of hours which are likely to be only a negligible proportion of the research which will be carried out in any event.
2. Are there disadvantages? The professional ethos of the Bar is important. On a daily basis, barristers are entrusted to deal with issues of considerable importance as part of their work. They do so without supervision by their regulator and without having to submit regulatory returns. But the proposal to regulate the private research of barristers (carried out in their own – unpaid – time) and to require annual certification from every barrister of every minute would be at odds with the Bar’s ethos of individual professional responsibility and trust. We are concerned that the proposal is seen by many in the profession as implying mistrust and is provoking a negative view of CPD and private research. We believe that a positive view of private research (as a highly desirable activity rather than as a regulatory minimum) should be encouraged, as it is in other professions.
3. Increase in bureaucracy. We believe that the record-keeping in respect of private research would add unnecessarily to the administrative burden. The proposal would require each barrister to make a record every time research is carried out. For a barrister who spends a short time every few days updating himself or herself this may require a large number of entries to be kept. In any event, as the activity is (by definition) non-verifiable, we doubt the regulatory value of this record-keeping.
4. Particular specialisms. We think that the proposal will fall harder on some sections of the Bar**,** particularly busy criminal practitioners who spend a great deal of time in court or preparing for court and who may have less time and less need for many hours of private research beyond that done for clients.
5. Demand for additional regulation of CPD? We are unaware of any public or professional demand for private research to be regulated centrally. There is no evidence that imposing a minimum number of unverifiable and unpaid hours of private research and similar activities will achieve any tangible benefit for the public or the Bar.

We believe that case for regulating private research and increasing the minimum hours by 12 has not been made out. If however, there is to be an increase in hours above the current 12 hour figure, we believe that unverifiable activities (including private research) should be included in qualifying hours.

**CONSULTATION QUESTIONS AND RESPONSES**

Q1 Do you think that the fundamental approach to CPD requirements should continue to be based on a system defined by the number of hours of CPD undertaken annually?

**Response.**

**Yes**

Q2 Do you agree with the proposed new approach for CPD that will, as a single but five-fold strategy (1) increase the range of approved CPD activities; (2) increase the number of CPD hours per annum; (3) raise the standard of record-keeping; (4) simplify the system of reporting, and (5) simplify enforcement of the CPD Regulations?

**Response.**

**For the reasons given in the introductory section, we do not support the proposal to increase the CPD hours and to regulate private study. Otherwise, yes.**

Q3 Do you agree that with the more flexible definition of CPD (Report paragraph 117) the required number of hours should be increased from 12 to 24 hours per annum?

**Response.**

**No. We repeat our introductory comments on the proposed increase in CPD minimum hours by 12 and the proposal that they should cover private research.**

Q4 Do you think that (if more hours are required) acceptable activities should include private study, relevant professional and personal skills, and a wider range of training activities than is currently accepted?

**Response.**

**Yes**

Q5 Do you agree that there should be no compulsory CPD topics for established practitioners, but a balance of activities must be undertaken?

**Response.**

**Yes**

Q6 Do you consider that the current system of applying for extensions of time should be continued?

**Response.**

**Yes.**

**We do believe that dispensations should be allowed, particularly for barristers who have had to take time out for illness or to have children.**

Q7 Do you agree that there should be no waivers of CPD requirements for barristers who wish to retain their practising certificates?

**Response.**

**Yes**

Q8 Has the system of accreditation of CPD providers and courses by the BSB outlived its usefulness, indicating that it should be replaced by the proposed system of barristers recording their own ‘verifiable’ and ‘nonverifiable’ activities?

**Response.**

**Yes. We are concerned that there is no mechanism for regulating the quality of CPD by outside providers, but we accept that it is difficult to formulate any practical scheme for doing so.**

Q9 Would a new system based on a barrister’s ***Declaration*** on application for the renewal of the practising certificate, together with retention by the barrister of a ***Portfolio*** recording CPD activities (for monitoring and sampling purposes) be an effective means of ensuring CPD compliance?

**Response. We agree in principle with the proposal to link CPD compliance with the issue/re-issue of a practising certificate. Subject to the two concerns set out below, we are also in general agreement with the scheme of enforcement proposed in paragraph 156 of the Consultation Paper - it being understood that it is only the PCC which will have the power (and discretion) to impose sanctions for failure to comply with CPD requirements.**

**(1) We particularly endorse the sentiments set out at paragraph 155 of the Paper. Some our us who sit on COIC Disciplinary Tribunals have found that the vast majority of the cases before them concern failure to comply with CPD requirements. In all bar a very few, the failure is indicative of a catastrophic personal trauma where the barrister concerned devotes all his energy to maintaining his practice and simply ignores correspondence from the BSB leaving it to be dealt with “later”. In most cases, the barrister does not admit the problem to anyone for fear of it adversely affecting his practice; very often no other member of chambers is aware that anything is amiss. As a result the problem escalates with further charges for failure to pay fixed penalties and failure to co-operate being added to the original CPD failure.**

**In cases of this nature we believe that punishment is not the answer. To the contrary, early intervention and the provision of appropriate support would enable most of the underlying problems to be remedied without resort to sanctions. We are therefore concerned that any system of enforcement should be designed to identify such cases at the earliest possible stage, for example by empowering the BSB to request an individual’s head of chambers to investigate the position if, say, two warning letters to the barrister went unanswered.**

**We believe that this could easily be accommodated within paragraph 156(3) of the Consultation Paper.**

**(2) We are also concerned to clarify how *“persistent default”* in paragraph 156(4) of the Consultation Paper is to be assessed, when and by whom. The proposed 9 months between application and renewal of practising certificate hardly seems long enough to allow for *“persistent”* default. Presumably, therefore, the intention in the case of a first offence is that the next following practising certificate will be renewed with any sanctions only being applied thereafter.**

Q10 Should the New Practitioners’ Programme be retained substantially in its present form but based on an annual return as opposed to over a three year period?

**Response.**

**Yes**

Q11 Should the Forensic Accounting Course be retained substantially in its present form (but with some improvements to content and delivery)?

**Response.**

**No. The evidence from our younger members suggests that this course is less well-regarded than the working party report suggests. The comments include the following:**

* **It is too “accountant focussed”. It would be helpful if at least part of the course were delivered by barristers, explaining the context in which the knowledge of accounting will be relevant in practice.**
* **It has been suggested that it be split in two, with basic instruction being given during the BPTC and that the main FAC be delayed until the third year of the NPP, when the attendees will be more able to understand the context in which forensic accounting is deployed in practice.**

Q12 Do you have any other comments on any of the recommendations or the proposed new system as detailed in Chapter XVI of the Report or in the draft Handbook?

**Response.**

**No**

(Inner Temple Working Party)

Master Reeve

Master Ayling

Master Cobb

Julia Dias

Alex Hall Taylor (BLC)

Fiona Fulton

Jennie Collis

Master Reeve

23rd September 2011

**From:** Corrina.Bielby

**Sent:** 23 November 2011 12:03

**To:** Consultation

**Subject:** Consultation on CPD for barristers Effect on full time traffic commissioners who are barristers

**Attachments:** Nolan Transport decision.doc; Bar Standards Board - Consultation on CPD for Barristers.doc

Dear Madam   
  
  
Please find attached a letter from Beverley Bell, Acting Statutory Senior Traffic Commissioner.   
  
  
  
Please also find attached the decision as referred to.   
  
  
  
  
Yours faithfully   
  
Corrina Bielby  
Personal Secretary to:  
  
Beverley Bell  
Traffic Commisioner for the North West Traffic Area  
Acting Statutory Senior Traffic Commissioner

**From: Mrs Beverley Bell LLB (Hons) Solicitor, FCILT, FRSA, FIRTE**

**Acting Statutory Senior Traffic Commissioner**

OFFICE OF THE TRAFFIC COMMISSIONER

FOR THE NORTH WESTERN TRAFFIC AREA

Suite 4 & 6 Stone Cross Place,

Stone Cross Lane,

Golborne,

Warrington

23rd November 2011

Ms Valerie Shrimplin

Head of Education

Bar Standards Board

289-293 High Holborn

London WC1V 7HZ

By email only: [cpdconsultation@barstandardsboard.org.uk](mailto:cpdconsultation@barstandardsboard.org.uk)

Dear Madam

**Consultation on CPD for barristers**

**Effect on full time traffic commissioners who are barristers**

I am responding on behalf of the traffic commissioners in Great Britain to the consultation that is being conducted on the proposals for barristers continuing professional development (CPD). In view of the unusual nature of our work as traffic commissioners I enclose some background information which may help inform any decision that you ultimately make. I also seek to comment on the proposed changes and how this would affect traffic commissioners.

**Background**

Traffic commissioners are listed tribunals for the purposes of Schedule 7 of the Tribunals, Courts and Enforcement Act 2007 but are appointed by the Secretary of State for Transport and do not fall within the scope of either the existing HM Courts Service or the Tribunals Service. We currently fall under the oversight of the Administrative Justice and Tribunals Council but that oversight will soon disappear with the abolition of that body. The Judicial Appointments Commission recognises the tribunal function exercised but currently has no involvement in the appointment of either traffic commissioners or the senior traffic commissioner. Much of the formal training undertaken by traffic commissioners is through the Judicial College (previously the Judicial Studies Board).

There are 7 full time traffic commissioners covering eight traffic areas within Great Britain, as a result of retirements there are five in post; three are solicitors, two are barristers. Our jurisdiction includes granting or refusing applications for heavy goods or public service vehicle licences, curtailment of authorisation, suspension of licences to operate, revocation of licences to operate and personal disqualification of operators and directors, as well taking action against transport managers who do not work to the requisite standard. Traffic commissioners also consider the conduct of drivers who hold or apply for licences to drive large goods and passenger-carrying vehicles. Traffic commissioners also have powers in respect of failures to operate local services and may impose regulatory sanctions including financial penalties. Traffic commissioners are also the appeal body in relation to impounded goods and public service vehicles.

Traffic commissioners act as single person tribunals and the responsibility for taking action under the relevant legislation is vested in the individual traffic commissioner dealing with a case.

It may also be helpful for you to know that there are approximately 20 or so deputy traffic commissioners, most of whom sit in a variety of judicial jurisdictions where part time appointments processes are carried out by the Judicial Appointments Commission.

As part of their terms of appointment the two full time traffic commissioners who are barristers are entitled to the payment of fees to retain their practising certificates. This necessitates their demonstrating on-going CPD hours.

**Effect of Proposed changes**

The proposals which are currently subject to consultation would have an impact on the ability of those full time traffic commissioners who are barristers to demonstrate compliance with CPD. As traffic commissioners sit in judicial hearings and produce decisions on cases we are considered by the Judicial Appointments Commission to be full-time judiciary. Unfortunately our terms of appointment and in particular the terms of our removal are not consistent with those members of the judiciary who fall within the scope of the Ministry of Justice. It is for this reason that the convention that barristers who become judges do not go back into practice, cannot apply to traffic commissioners who do not have the protections enjoyed by the mainstream full time judiciary. In view of this, traffic commissioners who are barristers need to retain their practising certificates so that if necessary, they can go back into “ordinary” practice.

Our request is that the time spent sitting in what are judicial hearings dealing with judicial matters count for the purposes of CPD.

The majority of decisions made by traffic commissioners are delivered orally with reasons provided in accordance with guidance from higher courts. However a number are delivered in writing, particularly where an unusual point of law is raised or there is an impact that is anticipated to be the subject of appeal. An example of such a decision is enclosed, involving an appeal over impounded heavy goods vehicles where points of law were raised on a range of issues. The decision was published by the Welsh Traffic Commissioner, who is one of the two barristers who sits as traffic commissioner.

It is submitted that sitting in judicial hearings demonstrated by written decisions should be capable of demonstrating adherence to the CPD requirements. Those full time members of the judiciary who fall within the scope of the Ministry of Justice do not face this issue as they do not need a practising certificate, but that is not the case with traffic commissioners.

We apologise for not complying with the time limit but are currently in difficulties with only 5 traffic commissioners covering 8 traffic areas. We hope you will still be able to take the contents of this letter into account.

If you would like me to expand on any of the above points, or you have any queries, please do not hesitate to contact me. I look forward to hearing from you.

Yours faithfully



Beverley Bell

Acting Statutory Senior Traffic Commissioner

Enc Copy of Nolan impounding appeals

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**DECISION OF THE TRAFFIC COMMISSIONER**

**WELSH TRAFFIC AREA**

**Nolan Transport –v – VOSA**

**Appeals against impounding of**

**Vehicle 07WX6976**

**and**

**Vehicle 03WX718**

**The Goods Vehicles (Licensing of Operators) Act 1995 (the “Act”)**

**Goods Vehicles (Enforcement Powers) Regulations 2001 (S.I. 2001/3981) as amended by S.I. 2009/1965**

**1. Nolan Transport own two heavy goods vehicles 07WX6876 and 03WX718 which were seized (impounded) by VOSA and, by way of appeal, seek their return.**

**2. Vehicle 07WX6976 was seized by VOSA on 17 May 2011, Nolan Transport claim that it was carrying out a lawful combined transport operation.**

**3. Vehicle 03WX718 was seized by VOSA on 20 May 2011, Nolan Transport claim that it was carrying out a lawful cabotage operation.**

**4. I determine that Nolan Transport has not satisfied me on the balance of probabilities that either vehicle was carrying out lawful combined transport or lawful cabotage and both were operated in contravention of Section 2 of the 1995 Act.**

**5. I also determine that Nolan Transport has not satisfied me on the balance of probabilities that it did not know that either vehicle was being, or had been, used in contravention of Section 2 of the 1995 Act.**

**6. Accordingly Nolan Transport’s two applications by way of appeal for the return of the vehicles are dismissed. It will be for VOSA to dispose of the two vehicles in the normal manner.**

**Format of decision**

7. In view of the number of separate complex issues raised I have sought to provide a degree of clarity by use of subject sub-headings, as follows:

* Background
* The public inquiry
* Authorities and written evidence
* Paperwork to satisfy enforcement officers as to compliance with cabotage and or combined transport operations. In other words does paperwork physically need to be in the possession of the driver?
* Combined transport
* Cabotage
* Groupage
* International journeys
* Knowledge
* Witnesses
* Decisions
* Other

........

**Decisions**

127. During the hearing I was asked to comment on the issue of discretion and proportionality. However the cases of *Frank Meager 2004/52* and *Romantiek 2007/172-175/181/255* are clear authority that I do not have any discretion as to whether to return an impounded vehicle. If a vehicle is lawfully impounded and the appellant does not satisfy me that one of the grounds of appeal is made out, the appeal must fail. Proportionality is not a relevant criterion.

128. I find that both vehicles were properly and lawfully impounded as set out earlier in this decision. The appellant has not satisfied me that any one of the grounds of appeal are made out, accordingly both appeals are dismissed. I refer to paragraphs 1 to 6 inclusive.

**Other**

129. Nolan Transport made it clear in its oral evidence that if necessary it would seek an operator’s licence from me, this is despite it having previously had one refused for NRT Logistics Ltd.

130. If Nolan Transport is to be successful in the future in obtaining an operator’s licence it will need to be able to show that it is capable of compliance. Nolan Transport told me at this public inquiry that it had systems for recording compliance with the rules, but it was clearly ineffective as although it recorded those journeys undertaken on its behalf, it was not a preventative system.

131. There would be a need for a cultural change in dealing with drivers who, I remind Nolan Transport, are its agents. If drivers are of a poor standard in terms of attention to paperwork, that is a problem for Nolan Transport. It is up to Nolan Transport to train its staff including drivers.

132. Richard Nolan told me that those involved in combined transport had been given specific training on the requirements, this included the drivers. My comment is that the training and the quality assurance was far short of an acceptable standard.

133. Richard Nolan also told me that he felt the impoundings were traumatic and clearly he thought that they were disproportionate. If he is ever to obtain an operator’s licence in Great Britain then he will need to be prepared for regulatory action. In the 2010 public inquiry there is comment to effect that a haulier based in Great Britain that had the problems encountered by Nolan Transport would be very likely to find its licence revoked. In other words, standards need to improve considerably.

134. When giving oral evidence Caroline Hicks from VOSA told me that she had received 3 or 4 complaints about an officer of VOSA being aggressive and vindictive, but she was not told who it was. I comment that the role of VOSA is to target those who statistically are likely to be non compliant, similarly VOSA should leave alone those who are compliant. Indeed that is a feature of regulators and enforcement bodies. The very large numbers of offences and failures identified in the December 2010 public inquiry lead me to comment that VOSA would not be fulfilling its role unless it checked Nolan Transport’s vehicles. It is reasonable to assume that there will be a time when there are far less stops of Nolan Transport’s vehicles, but this will occur when, but only when, Nolan Transport are stopped on a number of occasions with no apparent transgressions.

135. I appreciate that Nolan Transport felt that the (Great Britain) Road Haulage Association objected to the licence application by NRT Logistics Ltd in December 2010 as it had a vested interest. I suggest that that is neither correct nor fair. The standards of the compliant operator in Great Britain are far higher than that of Nolan Transport. Nolan Transport might opt to ask another Great Britain trade association for advice. Good compliant operators have efficient systems and quality assurance which might at first blush seem expensive, but the business efficiencies in best practice leads to efficiencies which also outweigh costs. The benefits to the travelling public in Great Britain are a standard of road safety that is the envy of most of the world; I refer to the road death figures especially those involving heavy goods vehicles.

136. I would be delighted if Nolan Transport improved its systems and processes so that it was successful in an application for an operator’s licence. But this requires standards that are at a level that is consistent with the responsible compliant operators in Great Britain.

137. There are time limits set for dealing with an appeal from an impounded vehicle including listing and provision of reasons. I sought an early hearing but determined that it was fair and just that sufficient time be allowed to obtain a proof of evidence from a new witness, I believe this was accepted by both sides. This case is relatively unusual in that there are genuine points of law that have not been considered before, hence I have sought to produce a decision that provides more explanation than is typical. I have determined that in accordance with (the new) Regulation 23 of the Goods Vehicles (Enforcement Powers) Regulations 2001 it is fair and just that this written decision is produced outside of the standard period provided.

138. Advocates from both Nolan Transport and VOSA provided skeleton arguments for me to consider, I am grateful to both Mr Nesbitt and Mr Hallsworth for their assistance; they have both been of considerable help.

**Nick Jones**

**Comisiynydd Traffig dros Ardal Drafnidiaeth Cymru**

**Traffic Commissioner for the Welsh Traffic Area**

**15 September 2011**

1. The Chartered Institute of Personnel and Development [↑](#footnote-ref-1)
2. The Chartered Institute of Personnel and Development [↑](#footnote-ref-2)
3. Consultation paragraph 129, Appendix D (Equality Impact Assessment), page 159 [↑](#footnote-ref-3)
4. Extract from para. 93, Annex A [↑](#footnote-ref-4)
5. Para 5, Annex A [↑](#footnote-ref-5)
6. Para 56, Annex A [↑](#footnote-ref-6)
7. Table 7, Annex A [↑](#footnote-ref-7)
8. Table 6, Annex A [↑](#footnote-ref-8)