

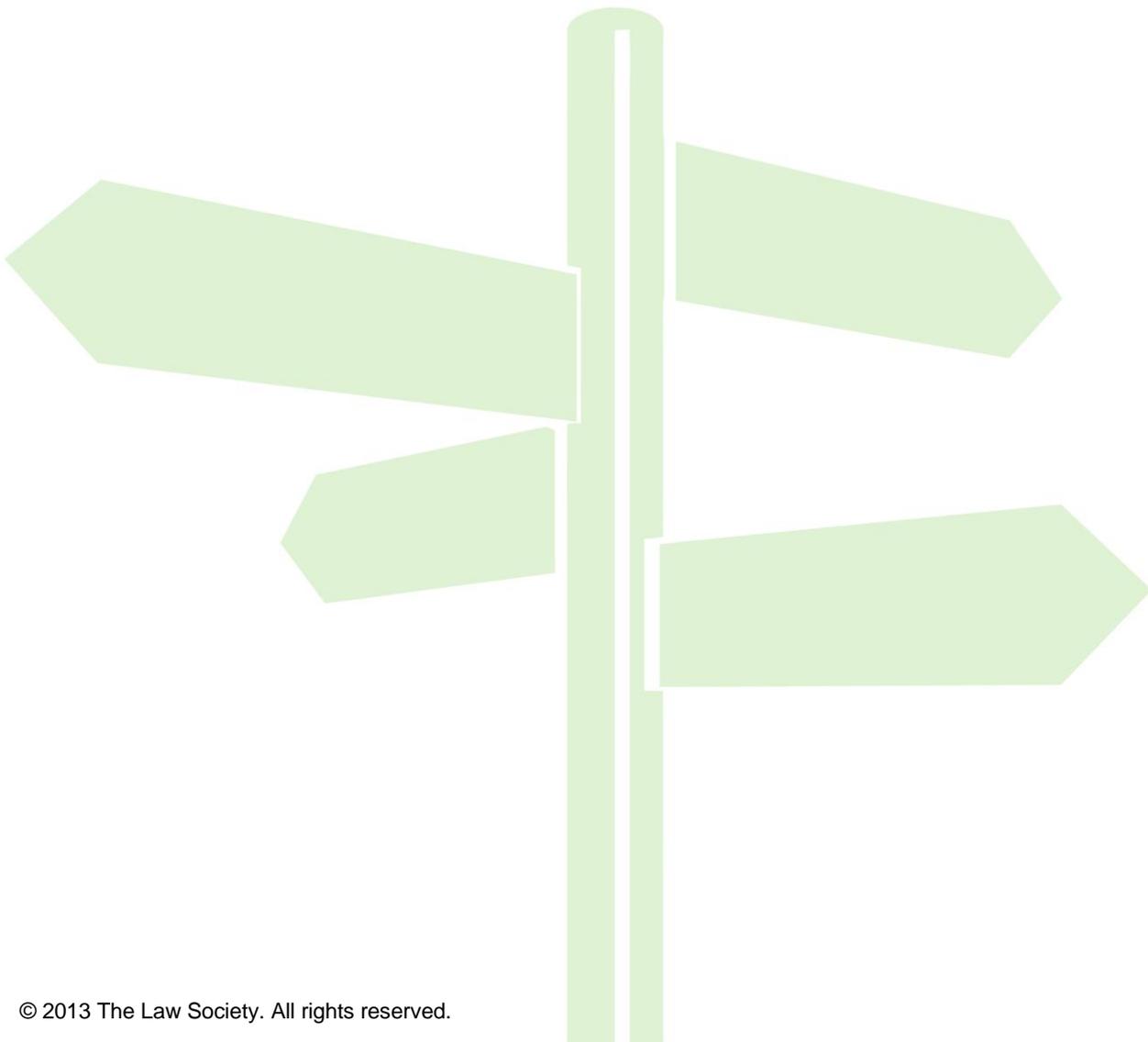


The Law Society

Training for Tomorrow: a new approach to continuing competence

Junior Lawyers Division response to SRA consultation

April 2014



SRA consultation: Training for Tomorrow

A new approach to continuing competence

Junior Lawyers Division response

Introduction

The publication of the Legal Education and Training Review (LETR) report in July 2013 signalled the start of a significant programme of reform of the SRA's approach to education and training. In Training for Tomorrow, the SRA response to the LETR report, they announced their intention to replace the mandatory continuing professional development (CPD) scheme for solicitors with a new approach to continuing competence. The consultation paper on this issue set out their currently preferred approach to continuing competence and other possible approaches.

This is the Junior Lawyers Division (JLD) response to the four questions posed in the consultation paper.

At the time of preparing this response, the SRA consultation on a new approach to continuing competence could be viewed [here](#).

Question 1:

Do you foresee any impacts from option 1, positive or negative that we have not already identified?

(i) Responsibility for continued professional development

The SRA has stated that responsibility for continued professional development would be "shared between the individual delivering the service and the entity in which they work". The JLD find this idealistic and unlikely to reflect real working practices. Under this option, where a junior lawyer believed that they were receiving inadequate training, it is likely that there is very little that they could (or would feel prepared) to do. Many firms are financially struggling and an opportunity to remove the prescribed CPD hours would open an opportunity for firms to take shortcuts. Junior lawyers who, by their very definition are likely to benefit most from continued professional development, are also often vulnerable to pressures within their firms (including bullying, concerns about job security, etc) and are not likely to speak up about inadequate training, even where it is officially their responsibility.

Fixed minimum hours of continued professional development allow junior lawyers the opportunity to point to a specific requirement for training purposes. This affords junior lawyers an element of protection when ensuring that they receive adequate training.

(ii) Enforcement

Option 1 relies on enforcement by the SRA to ensure compliance.

The JLD is concerned that SRA enforcement of non-compliant bodies will be highly labour intensive and unfeasible, given the equivocal nature of the training requirements. On a practical level, minimum training requirements which are open to interpretation would present the SRA with significant enforcement challenges. The SRA would need to engage with regulated bodies at a grass root level – that is, junior lawyers – to gauge whether training standards were adequate. This would need to be proactive monitoring by the SRA to ensure that junior lawyers have access to the professional development resources they need. The SRA have made plain that it has limited enforcement resources and has not indicated any intention to carry out random checks on regulated bodies. The JLD is therefore concerned that adequate enforcement measures would not be implemented. In the current economic climate firms are increasingly tightening their belts to decrease costs in all areas. The SRA need to ensure they have enough control over firms to make sure that they take responsibility for the continuing training of their junior lawyers. The obligation should fall on the firm to provide training and not on the individual lawyer.

Taking into account the SRA's limited resources and the responsibility on the individual practitioners for their ongoing professional development, the JLD is deeply concerned that option 1 is a scheme in which incompetent services are to act as the trigger for SRA engagement with a non-compliant body. This unease is warranted when considering the SRA's comment, "We consider it highly unlikely that an individual or entity would be able to deliver competent services over time without undergoing appropriate professional development." It would follow that an inadequate service would have to be provided to a consumer prior to SRA involvement. Again, this is a reactive not a proactive approach to ensuring lawyers are continuing with their professional development. The JLD does not understand how this would be of benefit to practitioners, regulated bodies or consumers. An 'after the incident' approach to inadequate training, i.e. after ongoing incompetent services have been delivered, will mean that damage to individual consumers, the practitioners involved and the reputation of the legal profession as a whole will have already been done. It is a concern of our membership that junior lawyers will not have access to the training they require but that more experienced solicitors will use an abolishment of requisite CPD hours to avoid doing any training at all.

The SRA are the solicitors' regulator, so why are they trying to reduce the regulatory burden in this pivotal area, to ensure the protection of consumers and the continuing quality standard of the profession? A structured framework for continuing professional development would surely ensure a high level of service.

Question 2:

Do you foresee any impacts from option 2, positive or negative, that we have not already identified?

The JLD is cautious about the emphasis on documentation under option 2. It appears to be a labour intensive option which simply moves the CPD problem from a tick-box one to a form filling one, which would be more labour intensive for all involved. Depending on the firm, each organisation will have a different appraisal system in place and this will not necessarily tie-in with the CPD year. It is therefore difficult to see how the extra administration placed on a solicitor under option 2 could be tied in with a firm's appraisal structure easily. The JLD is keen to see what is going to be required in the Competence Statement.

The SRA's position, that "a requirement to undertake a minimum number of hours CPD each year creates a culture which is concerned not with benefits that are derived from education and training but with compliance with the minimum requirement", is again, idealistic. It is based on the assumption that without a minimum requirement, firms and individuals may actually carry out more training than the basic minimum. However, many firms are on a tight budget and do not want to have to spend money over and above the minimum they can get away with in order to ensure compliance. The system of having a minimum number of CPD hours undertaken each year is the same as in other professions such as accountancy. The minimum number of hours approach adopted in other professions works well and ensures that everyone is complying to a quality minimum standard. It is open for firms to require their solicitors to undertake CPD above and beyond this minimum requirement if they have the resources and/or budget.

The JLD is concerned that if it is intended as something similar to the training diary for trainee solicitors, most practitioners will not do it, or at best pay lip service to the requirement. Within the training scheme, the SRA again operates a model of reactive monitoring and will only visit a small number of trainees to ensure their training diary is kept up to date. It would presumably be the same for the development plan and only a small number of firms would be inspected each year. This leaves scope for firms to not comply with option 2 as they may take the risk that they won't be inspected.

In the JLD's view, the success of this option is largely down to the prescribed form. Will it be lengthy? Will the form minimise the need for narrative answers? To what extent will it be an ongoing process? Or will it be an annual review that could be incorporated into firm's internal annual review processes?

A planned, structured training plan may assist junior lawyers to express their training preferences to their employers at the outset, helping to tailor their development to their personal needs and ambitions. At this stage, without further detail as to the expectations of the log, the JLD finds it difficult to comment on the merits of this proposal, and holds some grave concerns, as set out above.

That being said, the JLD welcomes the emphasis on placing the burden of responsibility for training on the regulated body as opposed to the individual.

Question 3:

We would welcome your views on whether or not the SRA should continue to suggest a minimum number of hours CPD for all solicitors.

We understand that the current system for CPD is that the SRA suggest a compulsory number of CPD hours to be undertaken by each solicitor per year to ensure competence in the area of the law they practice in.

Without the SRA regulating CPD by having in place a minimum number of CPD hours, junior lawyers may be at risk of receiving little or no training paid for by their firms. Our membership believes that as junior lawyers, we should be required to do more CPD than our more experienced counterparts. Our concern is that many firms will not pay for training courses over and above what is required to comply with the obligatory minimum CPD hours. Accordingly, if the SRA abolish the minimum number of compulsory CPD hours, it may mean that junior lawyers are not permitted the; time out of the office, the funds, or the reduction in chargeable targets, to carry out training. This could mean that the quality standard of the profession would not be maintained and consumers of legal services may be at risk.

In addition, abolishing the minimum number of CPD hours may also affect more senior lawyers if firms refused to pay for their CPD; risking knowledge becoming out of date, putting clients at risk and the lawyers in question at a disadvantage to others at firms where fuller CPD is encouraged and funded.

There is also a bigger issue to consider as to whether the current CPD structure for solicitors is fit for purpose. The SRA is currently supposed to be regulating and monitoring solicitors to ensure they fulfil their required CPD hours and also the CPD providers. There needs to be closer monitoring of the types of CPD that individual solicitors undertake. For example, many solicitors choose to take multiple choice quizzes as part of their CPD requirements, simply looking the answers up in the notes and entering these on screen. Whilst these do technically provide CPD points it is arguable that very little is learned from this exercise. Our membership are aware that a number of solicitors share the view that the CPD requirement is just a form filling exercise. However, a minimum requirement for CPD to be carried out in areas specific to which that individual practices would ensure that the CPD is relevant and goes some way to ensuring continuity of quality service given by individuals. CPD should be more about quality, not quantity. The focus should be on ensuring that solicitors only complete CPD that is relevant to their specific practice area.

Therefore, perhaps there should be an extra requirement for the CPD training to be signed off. This reporting process would inform the SRA of the following:

- i) What types of CPD the individual has completed
- ii) How relevant the CPD is to the individual's current role and;
- iii) What the individual learnt from the CPD

On the basis of the above the SRA could then decide to approve/reject the CPD. We appreciate that the SRA has limited resources to carry out this role. However, the question surely is, if the role of the SRA is not to regulate and ensure the quality of the profession, to protect the public / consumers, then what is the purpose of it?

In addition, our membership has expressed concern that the method of having a minimum number CPD hours to ensure competence needs to be updated to reflect the new alternative ways of providing advice in the profession (i.e ABSs).

A minimum level of CPD is essential, whether this is calculated by hours and/or some other quantitative element. Hours however seems to be the easiest for the practitioner and regulator to monitor. A suggestion from our members is that instead of a solicitor having to declare that they have completed their CPD once a year, they should be required to do so more often i.e. declare 4 hours every quarter, as this may fit in better with 'continuing' professional development.

Without a measurable level of CPD, there is no way for the solicitor, employer or regulator to know clearly if they are meeting their obligations. This could cause stress for the individual and employer in ensuring that requirements are being met and difficulty for the regulator in demonstrating how individuals have fallen foul of their obligations to the regulator. Ultimately, the consumer will be the ultimate victim in the removal of a minimum standard of CPD training, as the standard of legal services delivered, will become increasingly diverse.

Question 4:

What do you see as the advantages and disadvantages of these alternative approaches to monitoring?

Option 1 appears to be the SRA taking a step back from their regulatory role. In practice this may lead to firms dismissing the importance of CPD in order to save costs.

In order to ensure specific standards from all solicitors (as the SRA states is the aim of these proposals) we believe it is necessary to have set requirements and aims of all firms/solicitors. Stating that the SRA aim to ensure *“that our regulatory framework provides the necessary assurance to the public, consumers and the courts about the standards they can expect from those we regulate”* is entirely contradictory to the proposal that the SRA should take a step back and essentially leave CPD requirements to the firms and individuals themselves. How can the SRA be accountable to the public without knowing what is going on in the firms it supposedly regulates?

Even with options 2 and 3 the onus would be placed firmly on individuals and/or firms, leaving the whole CPD system open to being dismissed and not taken seriously. This is of particular concern to junior lawyers who may want to continue their development but who without the support of their firms may be unable to do so.

Having a nominated individual within each firm, to monitor CPD, would ensure that responsibility was held for ensuring compliance with CPD. Although, the JLD suspect that this may just transfer onus of completing the 'tick box exercise' to this nominated person. Essentially, having one person responsible for declaring that CPD requirements have been met in a firm may be too onerous.

In practice there needs to be a mechanism of ensuring individuals are keeping up to date with the changes/developments affecting their area of practice and there needs to be a way of documenting/marking/assessing this (which is not a tick box exercise).

Maintaining the minimum level of CPD and incorporating the recording of CPD hours into a personal development record, may be the way forwards (and with little additional resource/cost to the SRA). This personal development record could then be called upon should the firm be subject to an audit/Lexcel check and to satisfy a solicitor's firm's insurance requirements.

To conclude, the JLD is concerned about the impact of abolishing the minimum number of CPD hours on both their membership and the profession. Of most concern however, is the impact of this proposal on the public and consumers of legal services, as the SRA will not seek to provide a minimum level of ongoing CPD training for legal professionals. This will inevitably lead to varying standard of legal services.

Essentially, to those firms that currently excel at training and development, the abolishment of minimum CPD hours is unlikely to have an effect. However, the firms which currently struggle to ensure that each of their solicitors reach the minimum CPD hour requirements, will continue to struggle to ensure their solicitors are ensuring they are up-to-date with their practise area. In addition, if the minimum standard of CPD is not compulsory, many junior lawyers will find it difficult to obtain funding and/or time from their firms to achieve the necessary standard of legal services.

The JLD believes that by keeping the minimum CPD hour requirement under the SRA's remit will ensure that junior lawyers to have access to sufficient training which will ensure their competence as junior lawyers. This will ensure that both; the quality of the profession is maintained and that the public/consumer is adequately protected, when using legal services.

**Junior Lawyers Division
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