



The Law Society

# **ILEx Professional Standards Review of CPD**

Response to the consultation

September 2012



## **ILEx Professional Standards Consultation on revising the CPD scheme for CILEx members**

### **Response to the consultation**

#### **Introduction**

The Law Society is the representative body for more than 140,000 solicitors in England and Wales. The Society negotiates on behalf of the profession, and lobbies regulators, government and others.

The Law Society welcomes the opportunity to comment on ILEx Professional Standards' review of the CPD scheme for CILEx members and our response is attached at **Annex A**.

The Law Society has recently reviewed its own CPD policy as part of our work to feed into the Legal Education and Training Review and, more specifically, the SRA's ongoing work in reviewing the CPD requirements for solicitors. The policy covers guiding principles, key areas and elements that should be considered when constructing a CPD scheme. This is submitted in full alongside this consultation response for your information.

## **Annex A**

### **Response to questions**

#### **Q1: Is the new definition of continuing professional development (CPD), in paragraph 9, fit for purpose?**

Yes, the definition stated is broadly fit for purpose, in that it makes reference to the regulatory objectives as set out in the Legal Services Act 2007. The definition references both continuing fitness to practise and improvement, but could also make reference to the fact that CPD is a process of continuous learning and that CPD activity is learning that is outside the scope of everyday practice. This would serve to reinforce CPD in the minds of CILEx members as something that should be considered apart from day to day work and is to be reflected on, planned and approached as such.

#### **Q2: Do you agree that changing the emphasis of CPD activity to an 'outputs' scheme with an 'inputs' element will ensure that CPD will better demonstrate on-going competence and professionalism with members?**

Yes. The Law Society believes that the focus of CPD should be an outcomes or outputs one rather than an inputs or a time-served approach. Planning CPD activity with an evaluative element of reflection on what has been learnt and understood from it, as well as gaining an understanding of how it may impact on and improve practise, is key to getting the most out of the activity.

#### **Q3: Do you agree with the changes approach to require all grades of members to make the same minimum number of entries on their CPD record?**

Yes, it seems appropriate that all grades of CILEx members should complete the same number of CPD entries, with the understanding that the CPD they complete will be specific and appropriate to their level and role.

#### **Q4: Do you agree that there should be an annual compulsory ethics requirement as part of the revised CPD scheme?**

Professional and legal ethics and principles, as set out in the Legal Services Act should be one element of an effective CPD scheme. The Law Society has not previously advocated a compulsory element within CPD but would support guidance that promotes the undertaking of ethics training, as part of any CPD activity. It may be that it is unproductive to undertake this type of CPD every year and therefore disproportionate to mandate it, especially given the current lack of available appropriate training, which may result in needless repetition, when another area of CPD could be more beneficial. It would be interesting to see what provision IPS makes for this requirement.

The Law Society believes that those with primary responsibility for the supervision and training of trainee solicitors should undertake mandatory training relevant to these responsibilities, which can count towards their CPD. This should be clearly set out in their CPD objectives plan. This may include elements of ethics, alongside equality and diversity and training to be a trainer.

#### **Q5: Do you agree that any activity where learning has taken place should be able to be counted as CPD?**

The Law Society would not agree that any learning should be able to be counted as CPD as this may cause confusion between everyday work and specifically targeted professional

development. The planned CPD scheme set out in the IPS guidance document meets the Society's expectations of what CPD should be in that it is planned, carried out, evaluated and reflected on. There may be a risk though that the requirement for unplanned CPD could lead members to use work situations to generate these CPD activities purposefully, or that they may feel the need to log non-specific CPD activities as entries, in order to meet the requirements. All CPD should arise from a specific learning need, so to divide this process into two types may cause confusion.

**Q6: How helpful and easy to understand do you find the guidance on the scheme which has been provided in the handbook?**

The guidance is straight forward and succinct, which makes it easy to follow in most areas. It may be that more explanation of 'critical incidents' and unplanned CPD could be useful, as these are new concepts and it is difficult to gauge from the guidance what sorts of activities would come under this heading.

**Q7: Are the tools (i.e. the documents for reflection, planning and evaluation of CPD activities) accompanying the scheme helpful for planning and recording CPD?**

Yes, the forms cover the areas of thought and reflection that a professional should work through when planning, undertaking and recording CPD.

**Q8: Is the Competency Framework reference document helpful for planning CPD?**

Yes, the competency framework provides a good starting point for planning CPD and for discussion of CPD activities within an appraisal environment, where applicable.

**Q9: Do you have any other comments on the handbook?**

No.

**Q10: Do you agree that the CPD year should be changed from 1 January - 31 December to 1 October - 30 September?**

In light of the strict disciplinary consequences of not having a compliant CPD record, it seems fair that members be given an additional 3 months to adjust to the incoming system. Further information and guidance should possibly be provided on how to apply for an extension and the process to be followed when this is done.

**Q11: Do you agree with the approach which IPS intends to take on sampling of members' CPD records? Do you have any suggestions for the sampling process?**

The proposals for the percentage of random sampling are in line with those carried out by other professional regulators, such as the Health Professionals Council, who have carried out research in this area. It is not clear though whether there will be a mechanism to ensure that the same members are not picked each year, or on what basis there would be risk-based monitoring of members who have been subject to disciplinary proceedings, or for how long this additional monitoring would be undertaken.

It might also be necessary to mandate that records should be kept for a minimum of 5 years, rather than 2 years, with guidance suggesting retention for 5 years, as this sets contrary requirements that may or may not be met. If problems arise with a member it would be easier to identify patterns from CPD activity over the longer period of time.

**Q12: Do you agree that the new CPD scheme should remove the CPD exemption for members who are absent from work for more than 6 months in the CPD year?**

No, it is appropriate to recognise that circumstances may make it difficult for a member to complete a full CPD quota as set out in the guidance. This is especially true for those returning to work after a long absence, whether through career-break or illness, and those who work part time, with few hours. Whilst the Law Society fully supports the idea that practising members should be competent, the arrangements, as set out, may be disproportionate. If concerns arise about a member returning to work after a long absence it may instead be appropriate to require a return to work course, or a certain amount of CPD within the first 6 months back at work. However, it cannot be sensible to expect CPD to be undertaken whilst not working, as this is in many cases employer funded, and it would require a disproportionate amount of time spent doing CPD upon return to work for the requirements to be met. A greater degree of flexibility would better serve the aim of an equal system for all.

**Q13: Do you consider that the proposed CPD scheme may have an adverse impact on any protected group as defined by the Equality Act 2010 or any other group?**

As set out above, there is the potential for some groups to be disadvantaged by the requirements for all members to complete the same amount of CPD, irrespective of the hours they work or the amount of time in any given year that they have worked.

**Q14: Do you agree with the substitution of 5 hours CPD focused on advocacy skills for 2 entries on advocacy skills under the new scheme?**

Further guidance on how the current requirements for 5 hours translates into the proposed requirements for 2 entries would be welcome as the lack of information currently within the guidance could lead to less overall CPD time being spent on advocacy skills. It may also be useful to members to state specifically what activities could be used for these 2 entries and whether they should come from planned or unplanned CPD.

**Q15: Do you agree that IPS should reduce the requirements for Graduate members working towards Fellowship through the work-based learning scheme? This will reduce the requirement from 9 entries of which 5 are recommended to be planned, to 5 planned CPD activities for each of the 2 year period.**

Yes, it seems proportionate to recognise that those undertaking a work-based learning scheme are meeting the learning requirements of CPD through other means, collecting evidence in their portfolios to be able to document their learning, in a similar style to that proposed for the new CPD scheme. It is not clear from the guidance whether any sampling that occurs will also require that member to submit their portfolio, or whether there is any mechanism for a joined up approach to CPD and work-based learning. It may be useful, for instance, to require the a course supervisor to sign off on any CPD records submitted so that they are fully aware of any learning completed and can ensure that it dovetails with the activities undertaken during work-based learning.