

**Bar Council response to the Future Bar Training Consultation: Continuing Professional Development consultation paper**

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Bar Standards Board (BSB) consultation entitled Future Bar Training Consultation: Continuing Professional Development[[1]](#footnote-1) (“the Consultation”).
2. The Bar Council represents over 15,000 barristers in England and Wales. It promotes the Bar’s high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board.

**Overview**

1. The Bar Council accepts and supports the need for CPD as a key instrument for continuously maintaining and improving quality and standards at the Bar. Any regime for regulating or monitoring CPD activity should therefore be as simple and facilitative as possible, to encourage practitioners to engage in CPD in an effective way. Given that the BSB’s research has established that the overwhelming majority of barristers take seriously their responsibility to keep their skills up to date, in order to provide a competent service, and have had little trouble complying with the *current* system of CPD as an easy and verifiable method of showing what steps they take in that regard, any new system should not impose any greater burden upon that majority.
2. We regret to say that it is evident that the new proposals will impose a much greater burden upon all barristers. We are surprised to find that this is so, given the concerns expressed forcibly in response to the consultation in 2015. We take this opportunity to remind the BSB about barristers’ concerns about the proposed system and, while we have tried to give specific feedback about its implementation, we have struggled to find a way to ameliorate the concerns that we have.

**General feedback**

1. At present the administrative burden on the practitioner when engaging in CPD amounts to a requirement to record activity personally. 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.
2. The Bar Council firmly opposes any proposal to impose a further administrative burden on practitioners. In particular, we object to the proposal that some form of self-assessment should form part of the CPD requirements: this is unnecessary to begin with, will be time consuming for practitioners, and will often be completely pointless as the year’s practice changes.
3. Further, accreditation of CPD providers should act as a quality assurance mechanism. It ought to ensure that totally specious activities do not count towards CPD. The terms verifiable and non-verifiable are also subjective. This proposal clearly shifts the burden to the profession to undertake a type of accreditation for their CPD activities.
4. A perceived benefit of risk based regulation is that it decreases the level of intervention from the BSB. This will however not work for CPD. There will need to be extensive and ongoing training for practitioners from the BSB, and practitioners are far more likely to lapse in their compliance with unclear rules.
5. The consultation document does not explain how the BSB intends to explain the new system of regulation to the profession. Some practitioners may need additional training to understand how they should go about making a qualitative assessment of their CPD requirements.

**Answer to the consultation question (Do you think the proposed rules and regulations provide the necessary regulatory framework to support the new CPD scheme?)**

1. Whilst in a vacuum the answer to the question posed might be answered generally in the affirmative, we are not considering the answer in a vacuum. For the reasons we have set out, we do not think that the proposed new scheme is fit for purpose, and therefore we cannot agree that the proposed implementation is fit for purpose.
2. Our first reservation is that the definition of CPD is wrong in so far as it seeks to require or encourage barristers to *develop* their practices. Some – indeed many – barristers have found a practice niche where they are entirely content; do not wish to advance their learning (beyond keeping abreast of developments in their field); and are revered for their existing breadth and depth of specialism.
3. Secondly, we find the Guidance wordy and unnecessarily elaborate. We give examples in the Appendix.
4. Thirdly, the proposals impose a more onerous requirement upon barristers than the current regime (which most barristers find perfectly satisfactory). If the target of this regulation is the very small number of barristers who do not keep themselves up to a required level of competence, then why not focus upon those barristers under the current regime, rather than devise a completely new regime that will distract and frustrate the compliant majority?
5. Fourthly, although the consultation paper stresses the flexibility of the proposed system, its system of enforcement presupposes that there will be a standard against which non-compliant barristers are to be measured. The means of identification of that standard is nowhere to be found in the paper.
6. What is instead proposed is an introspective (and time-intensive) series of steps that bear little relation to the requirements of busy practice. Typically, a barrister will, in order to comply with the new system, craft a set of targets that borrow linguistically from the examples given in the Guidance. It is unlikely that the typical barrister will stand any realistic chance of adhering to those targets, because the exigencies of practice will intervene. The barrister will therefore have wasted time both in setting out the targets and then in explaining how he or she was unable to meet them.
7. If the aim is to be more flexible and proportionate, then we find it difficult to understand why the number of hours (or days) to be spent on particular topics is something that barristers must plan in advance.
8. In some cases, the number of hours may be a relatively insignificant factor in relation to the quality and effectiveness of the particular CPD activity; in others, it may be inevitable but unpredictable. Perhaps just as importantly, the availability, length and quality of courses are outside barristers’ control, and may be difficult to predict at the start of any particular year.
9. Surely barristers should be able to review the detail of their intended activities, and make decisions about what to attend, from time to time and as courses become available/publicised, rather than just (or even mainly) making a plan at the beginning of a calendar year which they are then meant to try to stick to?
10. Fifthly, the proposal takes insufficient account of the nature of practice at the employed Bar. Although that practice varies, many employed barristers (a) will not provide any advocacy services; (b) will not be involved in practice management; (c) will often work to corporate or employment goals which may be quite inconsistent with those set out in the proposed rules; (d) will wish to engage in business and management training to a far greater degree than is reflected in the proposed rules.
11. We have made some specific criticisms of the proposals in the attached Appendix. Please note that these criticisms do not take into account the points made fifthly above concerning the employed bar: in our view, the proposals require major reshaping to take those points into account.

**Conclusion**

1. There are many concerns with this model of CPD:
	1. Extensive additional training will be required to help barristers to make qualitative assessments about their own CPD requirements.
	2. The system is complicated, and so many practitioners are likely to fail in their compliance – not through lack of competence in their professional duties, but because of a failure to cope with the unnecessary formalities that the system seeks to impose. This will have implications for the amount of resource that the BSB need to allocate to investigations and will mean that barristers will potentially be penalised for not understanding a complicated system.
	3. It fails to take account of the different training model required by the employed Bar.

**Bar Council[[2]](#footnote-2)**

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**Appendix: suggested amendments to the proposed new CPD rules**

**C. THE CPD RULES**

**The mandatory continuing professional development requirements**

**rQ130 For the purpose of this Section 4.C:**

**1 “calendar year” means a period of one year starting on 1 January in the year in question;**

 **the normal commitments of a barrister, with a view to maintaining the highest standards of professional practice and keeping the barrister up to date in the skills and knowledge relevant to their present or proposed area of practice standards of professional practice.**

This redraft seeks to accomplish two things:

To eliminate repetition and unnecessary verbiage (eg the repetition of “professional standards” and ”standards of professional practice”); and

1. To recast the focus of CPD at maintaining excellence, rather than *developing* practice. Many barristers are rightly content with the state of development which their practice has reached, and have no desire to push for any further development.

**3. "CPD Guidance" means guidance issued by the Bar Standards Board from time to time which sets out the CPD requirements with which all barristers save those subject to the NPP must comply.**

The expression “EPP barrister” is clumsy and unnecessary. All that is needed is a rule stipulating that none of the foregoing rules apply to barristers subject to the NPP – see redrafted rule rQ1\* below.

**4. "EPP" means the Established Practitioners Programme which requires barristers, once they have completed the NPP, to undertake CPD during each calendar year in accordance with these Rules and the CPD Guidance.**

Unnecessary – duplicates rQ133. Delete?

**5. the “mandatory requirements” are those in Rules Q131 to Q138 below.**

**6. "NPP" means the New Practitioner Programme which requires barristers to complete CPD in their first three calendar years of practice in accordance with these rules and relevant**

**CPD.**

**7. a “pupillage year” is any calendar year in which a barrister is at any time a pupil.**

**rQ131 Any practising barrister who, as at 1 October 2001, had started but not completed the period of three years referred to in the Continuing Education Scheme Rules at Annex Q to the Sixth Edition of the Code of Conduct must complete a minimum of 42 hours of CPD during his first three years of practice.**

**Guidance**

**Guidance on Rule Q131**

**gQ1 Rule Q131 is intended to apply only in those limited circumstances where a barrister started practice before 1 October 2001 but after the NPP first came into force, left practice before completing the NPP, but has since returned. Rule Q131 requires them to finish their NPP during whatever is left of their first three years of practice.**

**rQ132 Any practising NPP barrister who starts practice on or after 1 October 2001 must during the first three calendar years in which the barrister holds a practising certificate after any pupillage year complete a minimum of 45 hours of CPD.**

**Guidance**

**Guidance on Rule Q132**

**gQ2 NPP barristers should have regard to rQ137 and the NPP guidance which will note the details of any compulsory courses the NPP barristers must complete. It also provides guidance as to the types of activities that count towards CPD.**

It seems odd to start with the exception – ie the NPP barrister, then to deal with the main subject, only to revert to the NPP barrister in rQ138. Suggest you set out the main rules that govern barristers, and then deal with the exception at the end.

**rQ133 Subject to Rule Q136, any barrister who holds a practising certificate or certificates during a calendar year must undertake CPD.**

**rQ134 A barrister who is required to undertake CPD must:**

**1. prepare a CPD Plan setting out the barrister's learning objectives and the number of hours and types of CPD activities he or she proposes to undertake during the calendar year;**

**2. keep a record of the CPD activities the barrister has undertaken in the calendar**

**year and retain evidence of completion of CPD for a period of three years;**

**3. keep a record in the CPD Plan for each calendar year of:**

**a. the barrister's reflection on the CPD he or she has undertaken;**

**b. any variation in the barrister's planned CPD activities; and**

**c. the barrister's assessment of his or her future learning objectives.**

**4. submit to the Bar Standards Board an annual declaration of completion of CPD in the form specified in the CPD Guidance**

**Guidance**

**Guidance on Rules Q133 and Q134**

**gQ3 barristers who are required by these Rules to undertake CPD should refer to the**

**CPD Guidance. The CPD Guidance provides further detailed information which barristers should use to plan, undertake and record their CPD.**

**The CPD Guidance explains that these Rules do not specify a minimum number of CPD hours which a barrister must undertake in a calendar year: it is the responsibility of the individual barrister to determine the CPD activities he or she will undertake in order meet the requirements of CPD. The Bar Standards Board will assess and monitor barristers' compliance with CPD.**

**rQ135 Upon the request of the Bar Standards Board, a barrister must produce his or her**

**CPD Plan and record of CPD activities for assessment. rQ136 Rule Q133 does not apply:**

**.1 in the case of a barrister to whom Rule Q131 applies, to any calendar year forming or containing part of the period of 3 years referred to in Rule Q131;**

**or**

**.2 in the case of a barrister to whom Rule Q132 applies, during any pupillage year or during the first three calendar years in which the barrister holds a practising certificate. rQ137 The Bar Standards Board may, by resolution, specify the nature, content and format of courses and other activities which may be undertaken by barristers (or by any category of barristers) in order to satisfy the mandatory requirements. rQ138 The Bar Standards Board may, by resolution and after consultation with the Inns,**

**Circuits and other providers as appropriate, vary the minimum number of hours of**

**CPD which must be completed by an NPP barrister in order to satisfy any of the mandatory requirements.**

1. [Bar Standards Board (2016) Future Bar Training Consultation: Continuing Professional Development](https://www.barstandardsboard.org.uk/media/1762782/cpd_rules_and_guidance.pdf) [↑](#footnote-ref-1)
2. This response was drafted by the Bar Council Education and Training Committee. [↑](#footnote-ref-2)