



**THE LAW SOCIETY  
of SCOTLAND**

[www.lawscot.org.uk](http://www.lawscot.org.uk)

## **DISCUSSING THE DETAIL...**

***Paper 2: A consultation on the future of solicitors'  
Continuing Professional Development  
requirements in Scotland***

**The Law Society of Scotland**

**Education and Training Committee**

**March 2008**

# Continuing Competence, Ongoing Development

## General

Unlike the Working Parties of the earlier projects, the Working Party of the Continuing Competence, Ongoing Development Project decided not to make specific recommendations to the President's Committee until such time as the profession and other stakeholders had had an opportunity to comment on their proposals. Accordingly, this Working Party developed 'ideas and suggestions'<sup>1</sup> which were developed into themes for the on-line consultation. These included that the CPD scheme should be kept as simple as possible, that monitoring should continue and that clear guidelines must be linked to relevant regulation. The Working Party identified that the benefits of any revised scheme should include the enhancement of the profile and reputation of the profession as forward-thinking, increase flexibility help the profession retain a competitive edge and assist with risk and stress management associated with professional practice.

The statistical responses<sup>2</sup> dealt with the themes and particular headings that had been developed by the Working Party. These responses indicated majority support for the accreditation of providers of CPD courses, the introduction of personal development planning and the development of a coherent definition of a solicitor and of core competencies. However, the free text responses<sup>3</sup> did not always support the statistics and as a result, it was decided that further consultation with practitioners was required before detailed recommendations could be drawn up.

## Summary of the free text comments

The free text responses indicated that there was a wide range of views on the 'proper role' of the Law Society of Scotland in this area of education and training.

### **1. Elements that might define the competent practising solicitor**

Responses indicated that keeping up to date with the relevant law for an individual solicitor's areas of practice was taken for granted. Other essential elements of competence included the ability to analyse complex scenarios and provide straightforward explanations, inspire and maintain trust and work well with colleagues and other professionals. Most comments indicated that, in addition to this, a competence solicitor would also keep up to date with

---

<sup>1</sup> See full Working Party paper

<sup>2</sup> See full Summary of responses at p7 of the Main Questionnaire results

<sup>3</sup> See full responses at p61-95 of the Main Questionnaire results

wider developments in the law and seek ways to enhance his or her ethics and interpersonal skills.

## **2. Areas that the Law Society might require as mandatory CPD**

Responses included specific areas of law, such as Money Laundering and European Law. Many respondents included ethics, client care, risk management and other non-technical skills. Whilst some respondents continued to be critical about the required 'management' element of the current system, most comments referred to the importance of CPD encompassing more than keeping up to date with the law for one's particular area of practice and must include personal and professional development.

## **3. Appropriate career milestones**

Most replies concentrated on suggesting that career milestones should be based on years in practice, such as 3 years after qualification, associate, partner, or a five yearly check. Others however commented that length of service would be regarded as discriminatory and any milestones introduced must apply across all areas of the profession.

## **4. Strengths and weaknesses of the current approach**

The main strength of the current approach appeared to be self certification and its ability to be tailored to individual needs. However, this also seemed to be its main weaknesses on the basis that people do not have to demonstrate that they are undertaking CPD directly relevant and of benefit to them. Weaknesses also included the mandatory management element, and not enough recognition of personal study.

## **5. Strengths and weaknesses of the ideas suggested**

There was considerable concern expressed about moving to the suggested 3 year cycle as members would not regard CPD as 'continuing' personal development. Accreditation of providers, although a good idea in principle, was felt to require considerable and continuing investment to ensure that it would be robust enough to allow the profession to rely on it. Comments on the proposed 'credits' suggestion focused on the difficulty of structuring it in such a way that would not be complicated to apply. Consultees felt that increasing the level of monitoring and bureaucracy would make it even more difficult for some areas of the profession to cope with another administrative burden.

## **Additional research and consultation**

Given the responses and the disparity between the statistical and free text responses, the Working Party commissioned further research and consultation to probe in more depth the responses from practitioners. Its Terms of Reference were:-

'To explore the following areas and provide recommendations as to how they could best be implemented through a regulatory framework:

Policy Intent	Required Work
The length of the cycle	To make recommendations as to the cycle and how it might be sub-divided
Development 'credits'	To provide a credits framework
Accreditation	To provide as accreditation regime and reference to credits framework
Personal Development Planning	To suggest a format and scheme for PDP
Career Milestones	To recommend a list of career milestones
Monitoring	To recommend an appropriate monitoring regime

Given these terms of reference, the project was divided into 2 distinct stages:

Activity	
Stage 1	Consult with other professional bodies, including the Law Society of England, the Royal College of General Practitioners in Scotland, the Institute of Chartered Accountants and SQA to identify relevant models for professional development frameworks and accreditation
Stage 2	Consult with Scottish law firms and organisations that have offered assistance and/or are recognised as good training firms

The First Stage investigated the approaches taken by other professional bodies to their continuing professional development. This investigation included direct discussions with individuals responsible for managing compliance of formal processes. This allowed 'off the record' discussions to probe what worked well in practice, the resources that were required and where problems arose.

A summary of some of these approaches is contained in Appendix 1, including a general statement to illustrate their overall approach to CPD. These general statements often re-inforced the benefits identified by the Working Party including the strategic role CPD plays in meeting the needs of a competitive marketplace and the demands of clients. Most emphasized that their CPD processes sought merely to formalise what committed professionals do on an individual basis to maintain and develop their competence.

These exemplars were then developed into examples of 'best practice' and were used in the Stage 2 interviews to facilitate in depth discussions about what would work well for the Society and its members.

Stage 2 involved discussions with practitioners. As always, the profession in Scotland responded positively to this request for further consultation. Over 50 individuals were approached by email and asked to comment on a number of headings based on the original Consultation headings, supplemented by the findings of Stage 1 (see Appendix 2).

18 people were consulted in depth by way of one-to-one interviews or completion of a written questionnaire. Respondents included large law firms, small law firms, public sector and in-house lawyers. The information and views obtained through this consultation were analysed in detail and findings developed.

## Findings from additional consultation

Under the original areas detailed in the Terms of Reference, comments were obtained and the results of these are summarised as follows:

Heading	Comments
The length of the cycle	Keep at annual as otherwise it will not been treated as significant and important.
Development 'credits'	Could become overly complicated and difficult to see how it would work without some element of the time involved.
Accreditation	Its aim would be to provide some re-assurance about the quality of the providers. Concerns that this would require considerable investment in resources for the LSS.
Personal Development Planning	Already in place in a number of organisations familiar with personal development processes. Cannot see an acceptable role here for the LSS and difficult for sectors of the profession, especially single practitioners and partners.
Career Milestones	Very difficult to apply across the profession, cannot simply use passage of time as may be regarded as discriminatory
Monitoring	Should be some rigour to the process but not simply more paperwork to complete. Monitoring would also have the advantage of providing evidence of trends and allow for future improvements to the overall process.

People were concerned that if the compliance cycle moved to three years that members would allow their completion of CPD to drift rather than see it as an ongoing and continuous investment in their development. Whilst it was accepted that CPD is more than simply doing a set numbers of hours a year, it was felt that the requirement to review where we are each year, what we

need to do and how we intend to do it is an essential part of ensuring our ongoing competence. Everyone agreed that, whilst development activities were often more than simply the hours spent on them, to introduce a credit system based on ascribing value to each activity would prove too complicated to apply in practice. In any event, there were differences in opinion as to which activity would merit additional credits. For example, lectures by experts in a particular field were seen by many to be as valuable as small group work.

Accreditation of external training providers by the Society was felt to be attractive in principle as it would provide some external 'benchmark' of excellence. However, given the range of external providers involved it was felt that there was a risk that this would lead to a reduction in availability of 'approved' deliverers.

As mentioned above, it was felt that having an annual training review cycle was essential. However, 'personal development planning' was seen by many as an area where the Society had to be careful about being too prescriptive and paternalistic. Therefore, most respondents recommended that this plan and review process must relate directly to the annual CPD process.

Discussions about Career Milestones emphasised that any recommendations in this area must be of benefit to and apply across the profession as a whole. Any attempt to relate it to simply 'associate' and 'partner' and indeed passage of time would be seen as discriminatory.

With regard to monitoring, it was essential that the process, in addition to being rigorous and consistent, must be seen to add some value to individuals, the profession and external stakeholders.

In addition to these prescribed headings, a number of consistent themes were identified, many of which confirmed the suggestions of the Working Party:-

1. any new process must be simple to understand and use, and must be applicable to all members,
2. with the profession facing considerable change in other areas such as the introduction of Alternative Business Structures and external Standards, it is essential to keep change to a minimum and continue to use descriptions that the profession are familiar with,
3. care has to be taken about the use of too much 'training and education' phraseology as it tended to be regarded as jargon by many of the profession
4. any changes must increase the profile of continuing competence and ongoing development within the Scottish legal profession,
5. CPD has a role in helping the morale and motivation of the legal profession in Scotland,
6. any training or development undertaken must relate to the area of practice that individual is engaged in and should have some declared objective in mind,

7. the current 20 hours requirement is in reality only 15 hours (5 hours being self certified personal study) and is regarded by many as tokenism, as most people completed considerably more than this,
8. the non-technical element must be maintained; however, the word 'management' should be substituted with 'personal/professional development/professional practice',
9. it is essential to widen the range of training and development activities that are recognised, to include for example, one-to-one coaching and on-line learning, and
10. that the requirements of dual qualified, other regulators and other professional bodies must be recognised.

Overall this additional consultation confirmed many of suggestions of the Working Party, the statistical results and the free text responses. It also allowed an improved understanding of the reasons behind these, potential practical models to be explored and identified improvements that would benefit the profession as a whole and were capable of implementation. All of this has resulted in more detailed recommendations being drawn up.

## Commentary

It is worthwhile at this stage to set the context of what the Society is trying to achieve through requiring its members to undertake continuing professional development.

In the Introduction to this Report, the Society stated that its approach to education and training aims to support its overall strategic ambition to be 'an effective, relevant and innovative professional body, protecting the public interest and leading a successful and respected profession'. In the Core Values of Legal Education, it states that it wishes to adopt best practice in the field of education and training and encourage all individual solicitors, and where appropriate this firms and management, to take responsibility for the future training and development of the profession and themselves.

Any definition of a profession includes a reference to acquiring and then maintaining a distinct body of knowledge and related skills as well as taking individual responsibility by exercising a high level of autonomy and initiative.<sup>4</sup> The Society should seek ways to recognise that commitment from its members and demonstrate that to third parties. In addition, the Society has a duty to ensure that its members continue to maintain the currency of their knowledge and skills to an acceptable level. This currency must include not only keeping up to date with changes in case law and legislation, but also the

---

<sup>4</sup> Larson MS (1979) *"Professionalism: Rise and Fall"* International Journal of Health Services 9; Dingwall R & Lewis P (eds) (1983) *"The Sociology of the Professions"* McMillan Press; Collins R (1990) *"Changing conceptions in the sociology of the professions"* in *"The Formation of the Professions – Knowledge State and Strategy"* eds. Torstendahl R & Burrage M Sage Publications; SCQF Level 12

needs of clients and of professional practice.<sup>5</sup> Reflection is a key element of learning<sup>6</sup> and it is therefore important that any process of continuing professional development (CPD) encourages that skill. The Working Party identified that one of the benefits on an improved CPD process related to morale and motivation, for example in helping the profession to cope with the risks and stress associated with professional practice today.<sup>7</sup>

CPD has traditionally had a low profile within the Society, evidence by the fact that until recently, it was under the remit of the Competence Committee rather than the Education and Training Committee. Yet many solicitors in Scotland maintain their competence on an ongoing basis in a variety of ways, which include supporting colleagues and younger professionals. Any change of the current process should be able to 'recognise' that investment and help to demonstrate this commitment to external third parties and the public. In addition, any adjustments to the current process must add value to the training and development already being done by committed professionals and should not impose duplication or an additional burden. For example, in-house lawyers now represent more than 30% of the legal profession in Scotland and often work under employer led formal processes, including annual appraisals, job descriptions and tailored training and evaluation. Any new process must be able to recognise this. Other jurisdictions and compliance and specialist requirements such as legal aid and IFA must also be accommodated.

All of this indicates that the Society aspires to develop and operate a process that recognises the 'good professional and that learning the craft of lawyering is complicated.'<sup>8</sup> It must therefore allow a 'blended' approach to learning that is complex and interrelated<sup>9</sup> at the same time as requiring everyone to complete a minimum requirement without additional time and/or effort in relation to compliance and demonstration.

---

<sup>5</sup> 'Development of personal transferable skills that are required for the profession include integration of theoretical and practical knowledge, communication skills, reflection on one's own knowledge and management of self, others and information' McLoughlin, C & Luca, J (2002), *'The learner-centred approach to developing team skills through web-based learning and assessment'* British Journal of Educational Technology Volume 33, Number 5 p571-582 at p572

<sup>6</sup> Schon D (1987) *'Educating the Reflective Practitioner'* San Francisco: Jossey-Bass; Claxton G (1999) *'Wise up: the challenge of lifelong learning'* London: Bloomsbury; Hinett K (2002) *'Developing Reflective Practice in Legal Education'* (UKCLE Guidance Note) Warwick: UK Centre for Legal Education; SCQF Level 11 describes this as 'practice in ways which draw on critical reflection on own and others' roles and responsibilities'.

<sup>7</sup> Cooper R & Sawaf (1997) *'Executive EQ – emotional intelligence in business'* London: Orion Business Books describe the self-discipline and emotional drive now required of professional practice in the current marketplace.

<sup>8</sup> 'The practice of law is, ultimately, a matter of engaged expertise. Like the experience physician, the legal profession must move between the detached stance of theoretical reasoning and highly contextual understanding of the client, case and situation.' Sullivan, W et al (2007) *'Educating Lawyers – Preparation for the Profession of Law'* San Francisco: Jossey-Bass at p115; cf Sullivan W (2005) *'Work and Integrity – the crisis and promise of professionalism in America'* San Francisco: Jossey-Bass

<sup>9</sup> See for example the comprehensive Table 12.2 Taxonomy of Informal Professional Learning Methods Cheetham, G & Chivers, G (2005), *'Professions, competence and informal learning'* Cheltenham: Edgar Elgar Publishing Ltd

The Core Values of Legal Education state that assessment of competence should be valid, fair and reliable, and that any system must be about quality and developing enduring skills through a focussed core. It is important therefore that the CPD processes should apply to all members and allow individuals to assess what skills and knowledge they require to develop in their current roles and future career. As a result, any education and training undertaken will be directly relevant to that individual. Any new process must allow and encourage members to look to their future needs and identify development activities that will allow them to achieve these. In addition, the process must be capable of being applied and monitored consistently as well as linked to pre-qualification assessment of competence.

## Recommendations

Based on the results of the original consultation and the further detailed research and consultation undertaken and its findings, a number of recommendations have been developed to take effect from 1 January 2009.

### **Recommendation 1**

The Society should continue to call its formal processes for maintaining and monitoring the competence of its members 'Continuing Professional Development'. The current annual cycle should be maintained with individuals self-certifying that they have met last year's CPD requirements. All new entrants will require to submit their annual certification on-line. Individual members undertaking a significant training or personal development project, such as a Masters degree, will have the option to seek for permission to apply for a longer CPD cycle than one year.

### **Recommendation 2**

All members must be able to demonstrate in a written form what they do to maintain their annual competence. The method they adopt is up to them to select and may include annual appraisal forms, in-house training programmes, and reflective portfolios. The Society will review each individual's written demonstration at least once every 4 years.

### **Recommendation 3**

The Society will introduce an annual written self-diagnostic form which every member must complete. This will require reflection on 4 elements: - Review of current area of practice and competence to identify learning needs, Planning to address these, Activity undertaken and Evaluation of the outcome. This will be an ongoing exercise, reviewed by the individual midway through the cycle to make any necessary adjustments. In addition, the Society will develop templates of good practice, including examples of what constitutes learning, sample completed self-diagnostic forms and written submissions.

### **Recommendation 4**

The annual required hours will be increased to 40 a year. The current recognition of carrying hours forward to and back from future and previous

years will continue. The range of recognised activities will be extended to include those activities not currently recognised, including structured and formalised one-to-one training, coaching and on-line training. The current recognition of additional hours in relation to preparation of preparation and delivery of training will be increased to a maximum of 10 hours. 50% of the required hours must relate to personal/professional development, such as risk, ethics and people management. 50% of the required hours must be in interactive training methods where attendees are required to contribute to the activity and not simply passively listen.

#### **Recommendation 5**

Employer firms and legal departments will have the option of appointing a Training Partner/Supervisor who must be a member of the Society. He or she will be responsible for maintaining the CPD compliance of all members of the Society. In addition, employers firms and legal departments can apply for exemption from the individual self-certification of their members by way of an annual written application demonstrating what they do to manage the 4 stage exercise described in Recommendation 3 above. Such an application must contain each individual member's written consent to this application for exemption. The Society will have the option of taking such steps to seek supplementary information and/or monitor this application that it considers appropriate.

#### **Recommendation 6**

In addition to the role of Training Partner detailed in PEAT 2, two additional Career Milestones will be introduced when members formally (1) assume line management responsibility for non-legally qualified staff and (2) assume line management responsibility for legally qualified staff. Either before or within 3 months of assuming either of these, members will require to complete 5 hours of people management training.

#### **Recommendation 7**

Annual Law Society of Scotland Excellence in Training Awards will be introduced to allow firms and legal departments to apply for recognition of quality and innovation in their education and training initiatives.

## **Appendix 1**

### **1 The Law Society (before change to the Solicitors Regulation Authority)**

General statement: *'assume responsibility for their own development by choosing from a wide range of activities that can be pursued in order to meet their CPD requirements'*.

- Completion of formal training record on a 3 year cycle
- 16 hours a year
- at least 25% through participation at 'authorised courses' which included formally approved training providers and structured coaching and mentoring
- Training providers can be 'authorised' in 2 ways: - in-house applies to firms and organisations that employ solicitors, where they operate a 'light touch: external providers complete an application form and are audited by external assessors.

### **2 The Royal College of General Practitioners in Scotland**

General statement: *'If CPD systems are based on the right assumptions, regulatory bodies can recognise the process of managed CPD for each doctor rather than just memorable, quantifiable events of learning'*.

- Based around annual appraisal and PDPs
- 50 hours a year
- EPASS system for accreditation of providers
- Additional option of seeking recognition as a Quality Award practice
- Fellow and Senior Fellow status

### **3 The Institute of Chartered Accountants of Scotland**

General statement: *'focuses on the outcome of CPD activities, thereby allowing members to concentrate on the impact their CPD has on the maintenance and development of their skills and their ability to perform effectively in their current role'*.

- Self certification annually with randomly selected monitoring
- Should be able to provide evidence of their CPD activity (records to be kept for 3 years)
- Undertake defined ICAS Professional Development Process: 4 steps – define current role, decide on training and development needs, develop or undertake a personal development or CPD programme, reflect on learning outcome and its impact
- Offers Accredited CPD Employer option

### **4 The Association of Chartered Certified Accountants**

General statement: *'The CPD process involves setting your CPD objectives, undertaking your CPD activity and evaluating your CPD activity'*.

- Annual return either on line or paper including ethics statement. Must indicate chosen route (individual or ACCA approved employer)
- 40 relevant units (1 unit = 1 hour) every year
- 21 to be verifiable (i.e. with supporting evidence '*consistent to your route*') and 19 non-verifiable. Can carry forward excess verifiable units. No supporting evidence is submitted
- Approved employer assessment matrix defines best practice statements used as criteria
- Those employers with IIP accreditation are automatically 'approved employers'
- Offers CPD Starter course and case studies on line
- Offers registration of CPD providers with annual fee of £1000

### **5 The Royal Institute of Chartered Surveyors**

General statement: '*to maintain your credibility, as well as your RICS credential, you must be able to evaluate your current knowledge, skills and experience, as well as assess your current capabilities and performance. The next step to explore how best to overcome your limitations and improve your performance*'.

- 60 hours over 3 years with at least 10 hours in any one year
- In addition, an annual demonstration that meet current goals and have revised learning objectives
- all new members after 1/1/2004 must complete their CPD on line.
- Recommends either PDP or maintaining a record of personal progress
- 4 elements – appraisal, planning, development, reflection and also allows for unplanned learning
- Provides templates

### **6 The Chartered Society of Physiotherapy**

General statement: '*you must be actively engaged in CPD, documenting and evidencing your CPD and applying learning to your practice.*'

- Puts responsibility on individual learner for managing, undertaking and evidencing
- Based in continuous and systematic cycle of analysis, action and review
- PDP and Portfolio based for all practitioners
- Provides guidance and templates on line
- Business Plan framework for private practitioners, Knowledge and Skills Framework for NHS employees
- Recommends a minimum of ½ day a month

### **7 The Institute of Civil Engineers**

General statement: '*all members shall develop their professional knowledge, skills and competence on a continuing basis, and shall give reasonable assistance to further the education, training and CPD of others.*'

- At least annually, requirement based on *'enough to develop and maintain the professional knowledge, skills and competence that you need'*.
- Development Action Plan linked to Personal Development Record, based on review, plan, act and assess.
- Offers examples of suitable subject areas and development activities.
- Templates available on line

## Appendix 2

### Headings for further enquiry

1 Most people spend a considerable amount of time maintaining and developing their own competence. We feel that the current system fails to capture a lot of that investment. We are keen to identify what we could do to provide support to your commitment to CPD.

Please describe what the Law Society could do that would add value to your existing CPD commitment.	
---	--

2 At the moment, CPD is measured in the number of hours that you spend on it. One of the results of the original Consultation was support for a move to a 'credit' system, where points would be awarded to different types of activities, such as formal assessed training, coaching and mentoring.

Please explain how you would like different learning activities to be 'credited'.	
---	--

3 Some professional bodies require members simply to self-certify the activities they have undertaken without any need to submit supporting paperwork and others use formal processes, such as written portfolios.

Please indicate how you would like to see these learning activities formalised.	
---	--

4 As indicated above, some professional bodies ask members to self-certify, some allow employers to assume direct responsibility for compliance and others conduct inspection visits.

Please indicate how you would like to see compliance monitored.	
---	--

5 The responses to the original Consultation indicated that there was support for Career Milestones.

Please explain what career milestones you feel would be relevant.	
---	--