

ANALYSIS OF THE CPD CONSULTATION AND IPS RESPONSE

1. This document identifies the key themes arising from the CPD consultation which took place between June and September 2012 and provides the IPS response to the issues raised.
2. In some cases, the IPS Reference Group has provided additional commentary on the issues arising from the consultation. These comments are identified as appropriate within the document.
3. IPS presented a paper to the Legal Education Training Review (LETR) Consultation Steering Panel on the proposed changes to the CPD scheme. Members of the Panel raised a number of issues which were not addressed within the consultation documentation. These are also addressed within this document.

The definition of CPD

4. The definition consulted upon was:

'The maintenance, improvement and extension of the professional skills and personal qualities necessary for the execution of professional and legal duties and compliance with the standards required by IPS, of CILEx members throughout their working lives to ensure that consumers and the public remain confident in the professionalism and competence of CILEx members.'

5. The following amendments have been suggested:

6. 'To continue the maintenance, improvement and extension of the professional skills and personal qualities necessary for the execution proper performance of professional and legal duties and compliance with the standards required by IPS through participation in activities which are outside the scope of everyday practice, of CILEx members throughout their working lives CILEx membership to ensure that consumers clients and the public remain confident in the professionalism and competence of CILEx members.'

IPS Response

7. IPS considered the changes to the definition which were recommended in the consultation responses and has amended the definition to:

'To maintain, improve and extend the skills and qualities necessary for the proper performance of professional and legal duties and compliance required by IPS, so as to ensure confidence in the professionalism and competence of CILEx members.'

A move to outputs

8. The consultation responses were split as to whether CPD should incorporate an outputs measure. 41% respondents agreed with the proposal, 47% disagreed and 12% were either unsure or made no observation.
9. IPS considered each of the following comments to determine whether the scheme should be amended to take these into account:
 - There should be research carried out into the current competence of CILEx members. HMCPsi research indicates that Associate Prosecutors are competent and therefore they should not need to change to an outputs based CPD scheme.
 - A certificate of competence provided to IPS by the employer should be enough to assure on-going competence and professionalism.
 - It would be better to increase the number of hours required rather than introduce an outputs measure.
 - Introduction of an outputs scheme will send a message to consumers and the public that members are not to be trusted.
 - The scheme should identify what will happen if the member identifies a learning objective which cannot be fulfilled for any reason.

IPS Response

10. IPS noted that 47% of respondents disagreed with a change to outputs measurement for CPD and preferred an inputs measurement. The comments supporting inputs measurements were considered carefully. IPS determined that an increase in the number of hours required of members would not assist in the assurance of members' competence. IPS decided that competence can be better assured where CPD is chosen on the basis of relevance to the member and this is better achieved through a process of reflection and evaluation. IPS recognised that the proposals are a significant departure from the existing CPD requirements, both at CILEx and those required of other legal professionals in England and Wales. However, this does not mean that IPS should not initiate the change where it considers the change to provide a better assurance of the competence and professionalism of members, which therefore benefits both consumers and the public. Therefore, IPS proposes that there will be extensive engagement with the membership to develop their knowledge and understanding of reflective practice and evaluation of learning.
11. IPS considered the HMCPsi Report. This is a baseline statement of competence and is not a measure of maintenance and/or enhancement of competence that can be achieved through participation in effective CPD. Furthermore the current link between specialist area and hours

ensures that CPD is relevant to the individual member. This could be linked to the 'success criteria' discussed at paragraph 82. This issue also links to the justification for the scheme, discussed at paragraph 57.

The same requirement for all grades of membership

12. The consultation has raised a number of different viewpoints on this matter. Whilst 43% of respondents supported the change to require all members to undertake the same amount of CPD, 49% disagreed with this approach.
13. A number of respondents stated that the work undertaken by Associates can be very different from that of Fellows and as a result not all Associates would be able to meet the requirements, for example if they are undertaking reception duties. In addition, the CPS believes that Associate Prosecutors should have different CPD requirements.
14. Alternatively, there was a view expressed that senior Fellows, who have 'few development needs' should have a lesser requirement, with Associates and Graduates having greater obligations under the scheme as they are still learning. This is not necessarily the case however; members who have been qualified for a long period of time may require refresher training and could also provide training to newer members of the profession, which in turn meets their CPD obligations, provided they develop themselves as a result of the training they provide to others.
15. The Reference Group initially expressed the view that there should be some distinction between grades of membership, but later recognised that as the new scheme was measured qualitatively, the distinction may not be as relevant.

IPS Response

16. IPS determined that whilst members in different grades of membership work in a variety of roles and have different career goals, the CPD requirements should be the same. Members whose role is not currently legal would be able to undertake a wider range of activities commensurate with their position. Similarly, the recommendation that more senior members of the profession should benefit from a reduction in CPD requirements has been rejected for a number of reasons. Senior members of the profession should set an example to more junior colleagues, more senior members are more likely to be involved in activities such as teaching which can also count as CPD and the rapid pace of changes in the law mean that regular refresher training is required of all lawyers.

The introduction of ethics as a compulsory element

17. The consultation raised a variety of views as to whether ethics should become a compulsory CPD subject for CILEx members who are obliged to undertake CPD. More than half of respondents thought that this should not be introduced. However, of these respondents, a number cited lack of available courses as the reason for this not to be introduced.
18. Other respondents believed that the requirement would be helpful; but stated that the subject matter could become repetitive if studied every year. There was a recommendation that the ethics requirement be compulsory every second or third year.
19. The Reference Group considered the introduction of this element and determined that it was a helpful addition to the CPD requirements. They considered that a requirement for the ethics element to be undertaken biennially would be sufficient to meet the requirements. The Group also suggested that there should be an annual requirement to download the CILEx Code of Conduct and that there should be a 'tick-box' on MyCILEx to confirm that the member had indeed complied with this requirement.
20. During the discussion, the Reference Group stated that once members were able to obtain independent practice rights, there should be a mandatory CPD requirement on those members who were practising independently to refresh their knowledge on practice management and accounts and that this requirement could be alternated with the compulsory ethics requirement.

IPS response

21. IPS noted that many respondents to the CPD consultation were against the introduction of a compulsory ethics requirement. Some respondents believed that there would be no available CPD to meet the requirement and others that an annual requirement was too frequent. The issue of compulsory refresher training for members who obtain independent practice rights was considered to be a helpful suggestion. As a result, IPS agreed that the ethics requirement should be biennial and that for those members who obtain independent practice rights, this should be alternated with a biennial refresher training in Practice Management and Accounts.

The Handbook and tools

22. Approximately half of the respondents found the handbook and tools helpful to support the scheme. Others found the handbook and tools complex and hard to understand.
23. The Reference Group considered that the scheme and accompanying guidance should be simple enough to allow members to understand and implement the required changes. Two key requirements for implementation of the changes were communication and simplification. The Group considered the inclusion of examples to be central to understanding the scheme.

IPS Response

24. Prior to the consultation, IPS had developed a series of tools and a handbook to assist members who were not used to reflective planning and evaluation, breaking the process down into a step by step approach. However, many consultation respondents found the process too complex and as a result, the handbook and tools were combined and simplified. These can be found at **Annex 5** of the application. These simplified documents were tested in the CPD pilot taking place between January and March 2013. The suggestion for examples will be introduced and these will be taken from the CPD pilot paperwork and anonymised.
25. CILEx has established an internal project group to ensure that the necessary arrangements are in place to support the revised CPD scheme. This group has met twice and has already started to consider arrangements for marketing the scheme and educating members in the changed approach to planning and evaluating CPD.

Changing the CPD Year

26. The change was supported by around half of the respondents. Of those that did not agree, many were concerned that there would be few available courses at the CPD year end and as a result would not be able to meet their obligations. Planning CPD earlier in the year should mitigate the lack of CPD courses in August and September.

IPS Response

27. IPS has determined that the change of year will be beneficial to members as it would enable IPS to engage with members who are not compliant with the CPD requirements in the 3 months prior to the renewal of the practising certificate. This change has already been

made to the CPD requirements at IPS, and came into effect from 2 January 2013.

Sampling requirements

- 28.70% of the respondents agreed that CPD should be sampled each year.
29. Of those that disagreed, some, including the Legal Services Consumer Panel, raised a concern that the sample size was too small. Others, including the Law Society considered the sample size to be appropriate.
30. The Health Professions Council have previously sought advice from the Statistics Service Unit at the University of Reading as to suitable sample sizes. They recommended a sample of between 2.5-5%, with adjustments made as necessary over time.
31. The selection of a random sample was questioned by some respondents, including CILEx, who were keen to ensure that the same members could not be selected year after year for sampling, as this was considered too onerous a requirement.
32. The length of time for which records should be kept received a mixed response from the consultation, one respondent stated that 5 years was appropriate, one believed that 18 months was long enough, allowing the record to be called in and checked after the year end. The responses supporting a 5 year retention period stated that this would allow for historic checks to be completed on members found to be not compliant in the current year. This was included in the handbook circulated with the consultation.
33. A suggestion was made that there should also be risk-based monitoring, in addition to the selection of the random sample. The original handbook makes reference to on-going monitoring of those who have been found not to comply from previous sampling and sampling of members who have previously been found to be in contravention of the CILEx Code of Conduct.
34. Finally, there was a request from a respondent for both positive and negative feedback to be sent to the member following sampling.

IPS Response

35. IPS considers that the proposal to conduct a 2.5% random sample is appropriate and that this falls within the recommendations to the Health and Care Professionals Council. All members are already checked for compliance and this will continue with the additional 2.5%

sample as an in-depth check on the CPD returns. IPS will however, keep the random sample size under review.

36. IPS considered the range of responses regarding the length of time for which CPD records should be held by the member in support of their annual declaration of compliance. Given that CPD is primarily an educative tool used to better assure competence of members, checking historical compliance is considered to be less relevant and IPS has determined that keeping supporting documentation for a period of 2 years would be appropriate in that context.
37. Where IPS identifies that members are not compliant, through random sampling, they will be selected for risk-based monitoring. In addition, members who are subject to disciplinary action which could have been avoided through undertaking appropriate CPD will also be the subject of risk based monitoring. Once IPS has obtained independent practice rights for its members, further risk based monitoring of CPD records may be considered appropriate.
38. The provision of feedback to members who are selected for random sampling is not considered to be practical. However, IPS has decided that a letter will be sent to each member selected for sample stating the outcome of that sample and general feedback on the outcome of the annual sample will be published in the CILEx Journal.

The Exemption

39. This proposal, to remove the exemption from CPD for members who have been absent from work for more than 6 months within the CPD year, provided the strongest commentary from respondents. Only 17% supported this change.
40. The change was recommended on the basis of risk. CPD assists in the assurance of on-going competence of members. Members who are away from work for an extended period may not be aware of changes and developments in the law and wider legal practice and as a result pose a greater risk of reduced competence on their return to work.
41. It is recognised however, that participation in CPD activities when away from work on maternity leave, long term sick leave or because of redundancy would create a barrier and has the potential to be discriminatory.
42. An alternative suggested by a number of respondents was the use of a return to work programme, similar to that offered by the Association of Women Solicitors. CILEx stated in its consultation response that it would be willing to develop such support for members.

43. The Reference Group agreed with the view more generally expressed through the consultation; that CPD could not be compulsory for members who are away from work for an extended period of time. They also agreed that members should not return to work after an extended period of absence without taking part in some refresher training. This approach was considered important especially in the future when members may be practising independently.
44. There was also a suggestion that part-time workers should have a reduced CPD requirement.

IPS Response

45. IPS recognised that the proposal to remove the CPD exemption from members who are absent from work for more than 6 months in any CPD year may impact adversely on groups protected under the Equality Act 2010. As member participation in CPD activities assists IPS in assuring the public and consumers that CILEx members are competent, IPS considers that an appropriate solution to the removal of the exemption is to replace this with a requirement to undertake a 'Returners to Work' course on return to employment.
46. As CPD assists IPS to assure consumers and the public that CILEx members are competent, IPS does not agree that there should be a reduction in the CPD requirement for part-time workers as they must be as competent as members who work full-time.

The requirement for advocacy skills CPD

47. Chartered Legal Executive Advocates are currently required to undertake 5 hours CPD each year which is focused on advocacy skills. The move away from hours to an outputs focused model meant that a change to this requirement was needed. The suggested change in the consultation was for 2 entries of the 9 to be focused on advocacy skills.
48. Most respondents (85%) who had a view on this change agreed that it seemed appropriate. However, the CILEx response indicated that this could make the requirement more difficult to fulfil as there are few courses available on advocacy skills and those that are available are repetitive.
49. The CPS considered 2 entries to be insufficient, pointing out that the existing requirement is almost one third of the total hours required for the year and therefore 3 entries would be more appropriate.
50. A requirement for compulsory CPD requirements for CILEx members who have, in the future, been granted independent practice rights has been suggested.

IPS Response

51. Most respondents agreed with the change to the CPD requirements for Chartered Legal Executive Advocates and therefore IPS intends to retain the requirement for 2 entries in advocacy skills to be compulsory for CILEx Advocates. The requirement for assessed CPD which will be introduced for CILEx Criminal Advocates under the Quality Assurance Scheme for Advocates will be able to be 'double-counted' for the purposes of the revised CPD scheme.
52. IPS has noted the suggestion that similar compulsory CPD elements should be introduced for CILEx members who, in the future, may obtain independent practice rights.

The reduced requirement for WBL applicants

53. The majority of respondents who expressed a view on this recommendation supported the reduction, with some caveats.
54. It was suggested that Graduate members who took advantage of the CPD reduction, should provide evidence that they are participating actively in preparation of the WBL portfolio. This may be through submission of the portfolio or a statement from the supervisor that the member is preparing a portfolio.
55. The Legal Services Consumer Panel requested a rationale for this reduction, other members suggested that rather than reducing the requirement, entries should be taken from the WBL logbook and put onto their CPD record to evidence that they are completing the requisite amount of CPD. At the very least it was suggested that if chosen for sampling, Graduate members seeking the reduction should produce their WBL documentation as evidence of qualifying for the concession.

IPS Response

56. The rationale for reducing the number of entries was that Graduate members participating in Work Based Learning are developing the skills required to become a Fellow. This will necessitate learning 'on the job'. As a result they should not be required to provide 9 entries. IPS proposed under the revised scheme that planned CPD activities should ideally make up at least 5 entries on the annual CPD record, this leaves 4 entries which may be unplanned. These entries could be made up from the 'on the job' learning and thus it was recommended that the entries could be legitimately reduced to 5 entries for Graduate members actively participating in Work Based Learning.

OTHER COMMENTARY

These additional comments were provided by consultation respondents and other commentators.

Justification for change

57. The central theme coming from the consultation which was not covered in the consultation questions is the lack of justification for changing the scheme at all. This included the assertion from the CPS that the HMCPSi inspection report found Associate Prosecutors to be competent.
58. In addition, at least 5 respondents to the consultation stated that the requirement for 9 entries should be justified.
59. Linked to the issue of what an appropriate number of entries should be, is whether an entry, which has been honestly included at the start of the CPD cycle, where it later transpires that the CPD objective cannot be fulfilled, can be counted as a valid entry. If it cannot be counted, guidance as to how the member will deal with this situation in their annual return to CILEx needs to be considered. A number of comments from the consultation indicate that employer needs can change through the course of the year and this can affect CPD planning.

IPS Response

60. The central reason for the change is to ensure that members are undertaking CPD which is relevant to their own development by using a system that guides members to reflect on their own development needs and evaluate the outcome of any training to ensure CPD is appropriately targeted.
61. Nine entries was chosen originally as this was the requirement that the General Pharmaceutical Council imposed on its members when they introduced this approach. Their justification for 9 entries arose from the switch from a voluntary to compulsory approach to CPD. When their CPD scheme was voluntary, they asked members to complete 1 CPD entry each month. Once the scheme became mandatory, the monthly requirement was considered too onerous and was reduced to 9 entries. The requirement for 9 entries will be kept under review for the first few years of the operation of the scheme to determine if this is the appropriate number.

62. Where an objective set at the start of the CPD year later becomes redundant, the original entry will not count, but where the member is close to the end of the CPD year, they be granted an extension in order to allow them to meet their CPD requirements.

Independent Validation of the CPD record

63. There was a recommendation from the Legal Services Consumer Panel that the scheme should go further and include independent validation of engagement with the scheme.

64. This matter was addressed by the Reference Group. They considered that asking for independent verification from a supervisor (the only form of independent validation presently available to IPS) would not necessarily confirm that the member had complied with the requirement as there may be routine sign off and this method of validation would not be appropriate for those members who are self-employed.

IPS Response

65. IPS considered this proposal but considered that the use of independent verification of the CPD record was unlikely to provide greater assurance of competence and this would not work for self-employed members. IPS considers CILEx members to be professionals and that the starting assumption should be that they can be trusted to complete a genuine CPD return without the need for independent validation.

Reaccreditation

66. The Legal Services Consumer Panel commended IPS for its move to outputs measurement of CPD. However they considered that this approach does not go far enough and suggested that a periodic reaccreditation of members would be a more robust method of assuring the on-going competence of members.

67. The Reference Group made the point that IPS has been developing a large number of new elements to qualification and on-going monitoring and that this could have a negative effect on the attitude of the membership, possibly resulting in 'regulatory indigestion'. A 'step by step' approach to the changes was recommended by the Reference Group.

IPS Response

68. IPS considers that reaccreditation may be an option for the future, agreeing with the comments of the Reference Group, that the

regulatory changes should be undertaken step by step. Introduction of the revised scheme should be monitored during its first few years of operation. At which point, the review would enable a risk analysis to be undertaken and any identified risks can be addressed.

Large Organisations

The CPS

69. The CPS expressed concerns about the introduction of the revised CPD scheme. Many of these concerns were based on the way in which the CPS provides training for its staff.
70. The CPS provides for all the training needs of its staff, based on role of the staff member within the organisation, rather than the development of the individual, although this is taken into consideration during the appraisal process. It also provides progression training for support staff wanting to become Associate Prosecutors but this is only provided as and when there are vacancies.
71. Training is planned with the line manager in the annual appraisal. The CPS has indicated that a CPD requirement which allows individuals to consider their own development needs, without seeking employer input could create a situation in which the CPS could be 'held to ransom' to provide progression training where there is no vacancy.

IPS Response

72. IPS considered the comments of the CPS carefully but determined that their concerns were unfounded as learning outcomes developed as part of annual appraisals could be accepted as the CPD requirements for IPS. IPS held a meeting with the CPS in November to discuss their concerns and once the issues and scheme had been fully explained, the CPS was happy that the revised scheme could fit well with their current staff development system.

Other large organisations

73. The issue of employer involvement in the development plan was raised by a number of respondents to the consultation, particularly those who work for large organisations such as Local Authorities, where all CPD is provided in-house and is provided on the basis of the needs of the organisation rather than individual development.

IPS Response

74. As with the CPS, putting greater emphasis on the annual appraisal of members working in large organisations will enable members to plan

their own development activities whilst at the same time, taking into account the needs of the employer.

75. In order to resolve the issues raised in both situations, there should be greater guidance provided to CILEx members.

Competency Framework

76. Linked to working for larger employers is the development of the Competency Framework. Whilst many respondents found the document helpful, including the CPS, others commented that the framework conflicted with their in-house competency framework. The CPS did point out that some elements of the framework were not relevant to their employees, for example competency 3 (client relations) as the CPS does not have a client.

IPS Response

77. The Competency Framework document has been provided as an optional tool for CPD planning and as a result, it will not be removed from the documentation. However, IPS will ensure that the supporting documentation makes it clear that the framework is provided as guidance only and is not intended to replace any in-house competency framework.

The use of CPD as a regulatory tool

78. IPS is able to use remedial CPD where a training need is identified as a result of a complaint. A question was posed as to how this remedial CPD would fit with the new scheme.

79. The Reference Group considered that remedial CPD included in a decision from the Disciplinary Tribunal should be additional to the minimum requirements of the annual scheme. This is because the member has been unable to identify this gap in their knowledge and skills alone.

80. The Reference Group also suggested that it may be helpful to be able to ask members to undertake some form of training in self-evaluation, which may enable them to identify such gaps in their knowledge and skills in the future which should in turn impact on future complaints against the member.

IPS Response

81. IPS considered the use of CPD as a regulatory tool. CPD can form part of an undertaking in a misconduct case. However, the requirement for CPD in each case does not form part of the sanctions available under

the disciplinary rules. IPS does however use the outcome of cases to educate the membership as a whole and identify key learning points.

Measurement of success of the scheme

82. The LSCP also recommended that 'success criteria' for the scheme should be identified and the outcomes from the change should be monitored periodically.

IPS Response

83. IPS considered a number of options which would be available to measure the success of the revised scheme. They included:

- Measure success according to level of compliance. This would be achieved by considering of the level, depth and range of compliance. It would be assessed by analysing the self-reflection, planning, action and analysis of outcomes achieved through the action.
- Ask members who fall into sampling to complete a questionnaire asking for feedback about the scheme, what they got from it, how they went about the various stages, and how it helped them improve/develop.

84. Whilst IPS could obtain feedback from all members or their employers this would be onerous, at least in the short term. However, it is an available option to IPS in the future, should it be necessary.

85. IPS considered the suggestion that it should provide success criteria for the revised CPD scheme and the options considered above. IPS has decided that it will produce an annual report which would outline the following information:

- Levels of compliance
- Outcomes of sampling
- Analysis of questionnaires from sampled members on their experiences with the scheme

86. In addition, IPS intends to conduct periodic reviews of the scheme. The first will be after 3 years of operation and the second after 5 years of operation of the scheme.