

International Approaches to Ongoing Competence

A report for the LSB

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Glossary of Acronyms

ABA	American Bar Association
AML	Anti-Money Laundering
CLE	Continuing Legal Education
CNB	Conference National des Barreaux (France)
CPD	Continuing Professional Development
DSBA	Dublin Solicitors Bar Association (Ireland)
EEA	European Economic Area
EI	Early Intervention (Alberta, Canada)
FAO	Fachanwaltsordnung (Specialist Lawyer - Germany)
FLAC	Free Legal Advice Centres (Ireland)
HKLS	Honk Kong Law Society
IAALS	Institute for the Advancement of the American Legal System (US)
IBA	International Bar Association
ICBA	International Criminal Bar Association
LSRA	Legal Services Regulatory Authority (Ireland)
MCLE	Mandatory Continuing Legal Education
NCBE	National Council of Bar Examiners (US)
NOvA	Nederlandse Orde van Advocaten (Netherlands Bar)
NZLS	New Zealand Law Society
OVB	Orde den Vlaamse Balies (Council of Flemish Bars – Belgium)
QIP	Quality Improvement Plan (Victoria Legal Aid Board - Australia)
TAS	Trust Account Supervisor (New Zealand)
VLA	Victoria Legal Aid (Australia)
VLSBC	Victorian Legal Services Board and Commissioner (Australia)

Executive Summary

This report offers a broad review of how legal regulators in a range of different jurisdictions are managing and improving the ongoing competence of their lawyers.

It addresses the following questions:

- What are legal regulators doing about ongoing competence?
- Why are some of the most common approaches, notably Continuing Professional Development (CPD), being reviewed or challenged?
- How are they being improved?
- What other tools are regulators using? and
- What lessons can regulators in England and Wales draw from others' experience?

[Part 1](#) sets out a conceptual backdrop to the rest of the report. It notes that ongoing competence assurance schemes in different jurisdictions reflect the various legal systems and regulatory regimes from which they have emerged. This has resulted in a low level of priority being accorded to in-practice regulation in many jurisdictions. These structural factors then contribute to ongoing competence assurance schemes that may not actually target the stakeholders they were intended to help. The report suggests a model for analysing the underlying objectives of different forms of ongoing competence assurance and the stakeholder interests affected. This provides a basis for explaining why some types of ongoing competence assurance activity may be more effective than others and where there may be gaps in any particular system.

[Part 2](#) then provides a critical review of hours-based CPD systems, which are the most frequently used tool for ongoing competence assurance in different jurisdictions. After a brief overview of the geographical spread and broad structure of such systems, the report goes on to outline the main criticisms made of them across many different jurisdictions.

[Part 3](#) discusses in more detail some of the additional requirements and new design elements that have been introduced to hours-based CPD in different jurisdictions. It also identifies the main likely beneficiaries of these changes. This part of the report notes, however, that whilst such improvements have addressed some of the shortcomings of basic hours-based CPD systems, they have also sometimes resulted in schemes that are overly complex and not always well understood by the professionals for whom they are

Part 1 presents a conceptual model to explain why ongoing competence assurance schemes may have very different intentions and produce very different results.

Part 2 reviews traditional hours-based CPD systems and the main criticisms levelled at them.

Part 3 summarises how hours-based schemes have been modified by regulators to accommodate new requirements and address weaknesses.

designed. The discussion concludes that whilst CPD inevitably has a role to play in maintaining the ongoing competence in lawyers, it cannot be the only tool. As the conceptual model set out in part 1 explains, a wider framework is needed to address ongoing lawyer competence issues.

[Part 4](#) begins to explore this wider framework, examining other ex-ante (input or process) measures and ex-post (review) measures, which are being adopted in various combinations by legal regulators, often alongside traditional CPD. The report notes that whilst these are definitely an improvement on traditional CPD, in some cases they are not necessarily as helpful as they might appear on the surface because, as in the example of specialisation schemes for example, they produce more benefits for lawyers than consumers, and could even be unhelpful by creating new, artificial barriers to practise in certain areas where these are not necessary.

The report then argues that, overall, the potential impact of measures taken will be reduced if they do not sit in any overarching framework for ongoing competence, which would enable them to join up and act in concert with each other. The report does note that there are a few legal regulators, most notably the Nederlandse Orde den Advocaaten (NOvA) (Netherlands Bar), the Law Society of Alberta (in Canada) and the Victorian Legal Services Board and Commissioner (VLSBC) (in Australia) who have been undertaking some considered thinking in this area. However, the report also notes that the absence of any metrics for assessing the effectiveness of competence assurance measures, is a widespread weakness.

Finally, [the concluding section](#) of the report puts forward some ideas for the lawyer regulators in England and Wales to consider. These range from reflections on the need for cultural change within the profession in relation to attitudes to lifelong learning, through to suggestions about how ongoing competence considerations might be linked more effectively with other in-practice regulatory tools.

Part 4 examines some other ex-ante (input) measures and ex-post (review) measures used for ongoing competence assurance in other jurisdictions.

Part 4 reiterates the importance of an overall framework to link different measures. It highlights the experience of three regulators in Canada, Australia and the Netherlands who are most advanced in their thinking in this area.

The report concludes with some thoughts on the lessons to be drawn from the experience of other jurisdictions.

Introduction

This report is designed to supplement the findings of the Legal Services Board's review of ongoing competence, by examining the approach that other jurisdictions are taking to this issue.

The report takes a broad definition of the competence assurance tools that a regulator might use, not limiting its purview only to the different ways of approaching individual learning and development, but rather considering any regulatory mechanisms that might contribute to lawyer competence, after admission and not including formal disciplinary processes.

This approach helps to unpick the various different stakeholders and interests involved in ongoing competence assurance. It is not just individual practitioners, regulators and clients who are affected by the competence of a legal professional: The wider profession, the legal system more generally and society at large all have separately identifiable, if often overlapping, interests in different facets of a competent legal profession. Understanding who stands to gain the most from any competence assurance activity will also help to determine how any overall scheme can best be constructed. For example, it may be preferable to leave individual lawyers and the market to determine how much practice-focused training a lawyer might need. On the other hand, since it is Society at large which is the main beneficiary of a legal profession that is alert to the risks of money-laundering, and individual lawyers would not willingly choose training in this subject, competence in this issue may need to be mandated by a regulator.

From this starting point, the report asks the following questions:

- What is being done under the heading of competence in different parts of the world that might offer lessons for England and Wales?
- Why are some of the most common approaches, notably Continuing Professional Development, being reviewed or challenged?
- How are they being improved?
- What other measures are regulators looking at in this area?
- How can any of this be leveraged for the benefit of consumers of legal services?
- And what lessons can regulators in England and Wales draw from others' experience?

The information about different jurisdictions captured in this report is by no means intended to be exhaustive and not every aspect of every jurisdiction's system can possibly be covered.

Three jurisdictions stand out as having approaches which are particularly thoughtful and with whom a joint reflection could be worth undertaking. These are: Alberta in Canada, Victoria in Australia, and the Netherlands. It is perhaps noteworthy that the three regulators in question are all independent and separate from the professional representative function of a traditional bar or law society. A summary of the developments in ongoing competence assurance in each of these jurisdictions is set out in the case studies in the annex of the report.

Part 1: What does competence mean around the world?

One of the difficulties of looking at other jurisdictions for ideas, or examples, of good practice in lawyer regulation, is that there are nuances both of language and regulatory structure that can affect our understanding of what is actually going on. Understanding the purpose, scope, and structure of regulation, helps to put bald facts into context and contributes to a better understanding what lawyer regulation is aiming to achieve in these different contexts.

Purpose, scope, and structure

History, economics and differing social and cultural norms mean that the purpose of lawyer regulation is not always based on the same underlying premise in all jurisdictions. In some, the primary purpose of regulation is to create a “safe space” of legal independence from the state, with economic drivers acting as only a secondary consideration. In other systems, lawyer regulation is seen as essential to the maintenance of public trust in the legal system, or it may simply be a matter of imposing light-touch regulation on a service transaction between a buyer and seller.

Differing goals of lawyer regulation will, in turn, produce different objectives for ongoing competence assurance. These can include:

- **To maintain the reputation of the profession** – for those organizations responsible for regulation in some jurisdictions, the integrity of the regulated title is at the forefront of considerations:

“The Norwegian Bar Association has worked since 1908 to boost the respect and trust that lawyers depend on, and that means that lawyers can be proud to practise their profession. The title Member of the Norwegian Bar Association (MNA) is a hallmark of quality that shows that a lawyer belongs to a proud professional community.....The Norwegian Bar Association wishes to safeguard the public’s interests and the reputation of lawyers by helping to ensure that all our members maintain high professional and ethical standards. Our members must therefore take continuous further education that is approved by the association. In Norway, all practising lawyers are bound by the Norwegian Code of Conduct for Lawyers, which has been drawn up by the Bar Association.”¹ (emphasis added)

Any profession has an interest in maintaining its own reputation and promoting its brand. This is designed to encourage users of legal services to purchase from holders of a particular title rather than any alternative potential provider of legal services.

- **To safeguard the public interest** – this may overlap with professional reputational interests but is a very different consideration. Whilst the wider public interest is served by a competent legal profession, that does not necessarily mean that an ongoing competence scheme designed to serve the public interest would look exactly like one designed purely around the profession’s collective interest. For example, the public interest might lie in reducing requirements for Continuous Professional Development (CPD), on the grounds that such schemes add cost to the system (see evidence from the Victorian Legal Services Board and Commissioner (VLSBC) on cost cited on page 19). On the other hand, the

¹ <https://www.advokatforeningen.no/om/om-medlemskapet/english/the-norwegian-bar-association/>

professional interest of self-regulating bars and law societies may lead them to promote higher CPD requirements, perhaps as a means of substantiating claims of higher “quality” or better consumer protection than potential alternatives.

- **To support the justification for self-regulation** - The International Bar Association (IBA) Bar Handbook, for example, quotes the United Nations (UN) Basic Principles on the Independence of Lawyers and the Judiciary, which states:

“Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity.” (Principle 24)

The Bar Handbook goes on to suggest:

“Continuing Legal Education (CLE)² may substantiate the legal profession’s claim to self-regulation. It has been suggested, for instance, that the public willingness to allow the profession to continue to be self-regulating is based in part on its specialist training, knowledge, and skills, which differentiate it from other professionals and from the general public. If lawyers do not maintain this specialist training and knowledge, their status as professionals will be undermined.”

This touches on a theme which runs through this report. The structure of regulation has a strong influence on what form ongoing competence assurance, and CPD in particular, takes, and, most importantly, whose interest it serves.

- **To permit individual professionals** to substantiate claims to any special skills or knowledge they might have on an ongoing basis. See for example, more detail later in this report about the German specialist lawyer scheme, the Fachanwaltsordnung (FAO).

Being able to differentiate between lawyers may be helpful for consumers but not if the design of the specific system acts to create artificial barriers to practice that add cost to the consumer. Such schemes are considered in more detail later in this report.

- **To assist consumers in choosing a lawyer and understanding the quality of service they need and the quality of service they are actually getting.** Individual client interests, as opposed to the broader public interest, have historically featured little as a consideration in ongoing practice regulation around the world. Some emerging thinking from the US, highlighted in section 4, suggests that a better definition of the competences that lawyers need in practice could not only help consumers choose their provider more effectively but also support the faster adoption of legal tech.

Whilst purpose may pull lawyer competence systems in different directions, the scope of regulated legal activities also plays a part. In some countries, where the lawyer monopoly is very limited (e.g., Norway and Finland), the scope of lawyer regulation is restricted largely to title and court activity. In other countries the issues are more complex. Lawyers may be competing against other professionals in wider areas of activity (e.g., succession planning,

² The term Continuing Legal Education (CLE) is generally used in this report only with reference to US system on ongoing lawyer training and education. Although this term is generally used more or less synonymously with Continuous Professional Development (CPD), the US concept of CLE tends to be more narrowly focused on knowledge and substantive law, rather than the broader skills development approach which can characterise CPD.

tax advice as in many other European jurisdictions), or only against their peers within the legal profession where there is a broad regulated lawyer monopoly (e.g., the US). The wider the scope of the lawyer monopoly, the more the market will be distorted, so the greater need for some regulatory intervention to ensure public interest or consumer interests are considered.

Finally, the structure of regulation is also relevant. At a very broad level, lawyer regulatory systems are carrying out three functions:

Figure 1: Three Function Model of Regulation



(nb. The dotted line indicates that not all lawyers end up being disciplined!)

An IBA report into the structure of regulation in more than 200 jurisdictions published in 2016³, revealed that a single regulator is responsible for substantially all of the functions of regulation in only 52% of jurisdictions. It went on to describe a state of affairs in which the task of regulating ongoing practice was more often than not, delegated to a professional self-regulating bar association.

Figure 2: Who is responsible for in-practice regulation?

Predominant regulator of practice	Number	Percentage
Court	42	19%
National Bar	127	58%
Local Bar	17	8%
Government	14	6%
Independent or Delegated Regulatory Authority	11	5%
Mixed or shared responsibility	8	4%
Total	219	100%

Source: IBA, *Directory of Legal Regulators*, 2016

This matters because the selection of who is to be responsible for in-practice regulation will colour how they approach their tasks, and as noted above, there are many different motivators for addressing ongoing competence, within that overall responsibility.

³ Report on IBA Directory of Legal Regulators, Hook Tangaza (2016)

The overall approach taken to ongoing competence assurance will therefore depend on the character of the regulator/bar, the scope of activities they regulate and their role within the overall system:

- For disciplinary focused regulators it may be about spotting bad apples and weeding them out.
- For broader regulators it may be about preventing incompetence or encouraging individuals to recognise when they need to adopt a self-correcting course.
- For professional representative bodies who also regulate – it may also be about encouraging lawyers to improve their competence through the enhancement of their professional knowledge and skills (e.g., as part of the contract with society), for self-fulfilment purposes, to increase competitiveness of the title, or in order to foster a spirit of professionalism.

The next section of this report will look more deeply at how the nature of the organisation with responsibility for ongoing competence assurance mechanisms influences the design of these mechanisms, and who benefits from them.

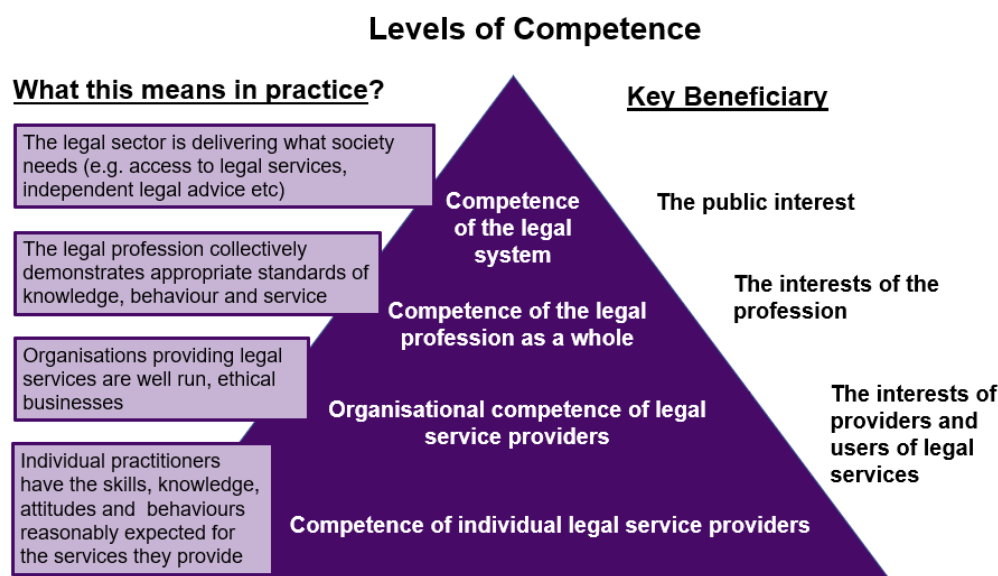
An ongoing competence model?

The model in figure 3 illustrates that “competence” contributes to an efficient and effective legal system at many levels. It also illustrates that the main beneficiaries of activities designed to improve competence could be very different, depending on how measures are designed. For example, the introduction of specialist accreditation schemes which act as a gateway to practice in areas serving the most vulnerable in society might be justified and operate in the public interest. On the other hand, the introduction of voluntary lawyer specialist designations which principally act as a marketing tool, mainly benefits the legal professionals who choose to take these specialist titles. There may be some ancillary benefit to consumers from such schemes, in the form of greater information on which to base their choice of lawyer, but this could be outweighed by the likely higher costs of using specialists. Much will depend on how such schemes are designed (see section 3 for more detail).

Figure 3 is clearly, an oversimplification, as a variety of interests may be touched by any individual ongoing competence assurance measure. Nonetheless, only by understanding what any measure is primarily designed to achieve, and who is likely to be the main beneficiary, can we judge whether ongoing competence assurance schemes are fit for the purpose they are intended to serve.

The other important point to draw from figure 3 is that it emphasises that there are different levels of competence. It may be important for a consumer to have access to a competent lawyer, but this will be of less value if that lawyer works in an incompetent organisation, if the overall behaviours and attitudes of the profession are toxic and if the legal system itself is failing. Although a legal regulator cannot take on responsibility for delivering outcomes in all of these areas, there are many that it could influence.

Figure 3: A Model for the Competence of the Legal System



The next few sections of this report will look in more detail at some of the ongoing competence approaches adopted in other jurisdictions and relate these back to Figure 3.

As a broad generalisation, it is fair to say that most jurisdictions are not starting from first principles when designing their ongoing competence assurance systems. The ideas and practices being used elsewhere, especially in the United States (US), are highly influential. Regulating professional associations in many jurisdictions have adopted ongoing competence schemes such as Continuous Professional Development (CPD), because these are seen in international legal professional circles as indicators of a 'properly regulated' bar (see for example above the above reference to the IBA Bar Handbook). In only a few exceptional cases (see annexed case studies) are some lawyer regulators beginning to focus on ongoing practice assurance from first principles.

This illustrates the problem succinctly:

- In-practice regulation around the world is characteristically the unloved middle child of regulation. There are few clear objectives about what should be happening at this stage of the lawyer lifecycle. It is not prioritised, not well defined, often delegated back to a representational professional body, which has different motivations in how it carries out this task.
- In most parts of the world, the tools used at this stage of regulation are either seen as processes that are ultimately connected to the detection of violations and the potential for disciplinary action, or they are "membership" actions, designed to promote either the interests of individual professionals or the legal profession as a whole. That is not to say that consumers and other users of legal services will not benefit from these actions, it is just that they are not the primary target of them and there may be unintended consequences in terms of increased cost or limits on the choice of provider which undermine these benefits.
- They are not joined up to create an in-practice regulation model and not linked to any overall concept of what competence looks like in a practising (as opposed to a newly qualified) legal professional.

Part 2. The Starting Point - CPD

The Regulation Toolkit for In-Practice Regulation

Although those responsible for in-practice lawyer regulation may have very different starting points and drivers, there is a fairly standard palette of regulatory tools employed in most jurisdictions. These include:

- Promulgation and updating/changing of ethics rules.
- Continuous Professional Development (CPD)
- Inspections/audits of individual practices
- Accounts rules and monitoring of adherence to them
- Annual renewal exercises and associated declarations
- Professional Indemnity Insurance requirements
- The use of cultural norms: Socialisation and peer pressure (e.g., dress, dining, conduct) to influence behaviour.

This list is not exhaustive and other tools are considered below. However, when it comes to considering 'competence', this is widely seen as synonymous with mandatory CPD or continuous legal education (CLE).

The use of mandatory CLE as a tool to promote competence began in the US and gained traction in the 1970s and 1980s before spreading to other parts of the world from the late 1980s onwards. From New South Wales in 1987, to Hong Kong in 1991 and the rollout of CPD to cover all solicitors in England and Wales in 1998, mandatory CPD has now become widespread. But it is by no means universal - there are still five US jurisdictions (the District of Columbia (DC), Maryland, Massachusetts, Michigan, and South Dakota) which do not stipulate any continuous learning or development for lawyers after admission⁴. In Europe, eight of the EU27 Member States do not have mandatory schemes. Although Hungary, Slovakia, Slovenia, and Croatia are planning to introduce such schemes in future, the Czech Republic, Portugal, Spain, and Greece have no plans to do so.

The Icelandic Bar Association has, reportedly⁵, repeatedly requested the Icelandic Government to change the law to make CPD mandatory for its members. The Icelandic Ministry of Justice has however demurred, and clearly does not see this as essential to the existence of competent lawyers in Iceland.

At their simplest, mandatory CPD schemes set out a number of hours of learning and development that an individual practitioner must complete over the course of a year or sometimes a longer reporting cycle of 2 or 3 years. CPD hours requirements vary widely, from the equivalent of 3 hours per year⁶ in Alaska and Hawaii through to 20 in Ireland and France. Figure 4 illustrates the broad distribution of schemes in 85 jurisdictions across the US, Canada, Australia, New Zealand, Hong Kong, Singapore, Scotland, Northern Ireland, and the EEA. An enlarged version of this diagram is available in annex 1 to this report. The important point to note, however, is that there is a general convergence of schemes around a requirement for 12 - 15 hours per year.

These input-based systems, measuring competence through number of hours of education and training undertaken have come under scrutiny in recent years as alternative schemes, focusing more on learning outputs or self-reflection, have been picked up from other

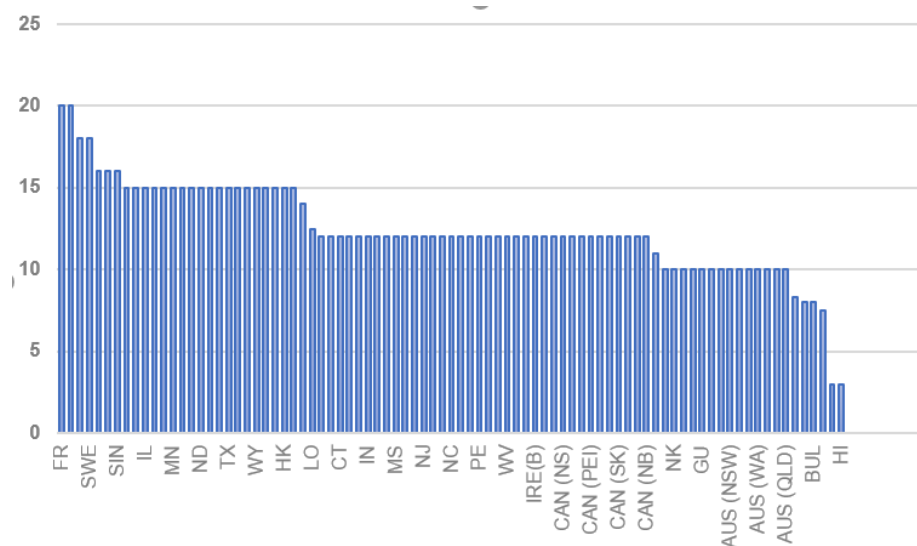
⁴ National Conference of Bar Examiners (NCBE) Report, 2019

⁵ European Lawyers Foundation, Assessment Report on the Situation in the EU, and EEA Member States regarding Recognition of Foreign Training (REFOTRA report), 2017

⁶ The formal requirement in these States is 9 hours over 3 years

professions. These schemes and where they are being used, are covered in more detail in section 4.

Figure 4: Mandatory CPD Hours Per Jurisdiction per year



Source: Various national sources, CCBE and ABA – see annex for enlarged version

There is a general assumption prevailing within the legal profession (see box 1 for example) that the mere existence of a scheme defining a number of input hours will in itself deliver competence (emphasis added). Simply by linking the fulfilment of mandatory CPD obligations to licensure, there is a sense given that the job of an in-practice regulator is largely done, and competent profession will result.

Of course, most schemes do not simply specify number of hours to be completed they also often spell out detail on the following elements:

- What can count towards the fulfilment of the hours requirement (lectures, courses, self-study, participation in Bar activities etc)
- Who can provide it? (providers may need to be accredited)
- Who may get an exemption of some or all of the requirement?
- How it must be reported?
- Penalties for non-compliance, ranging from administrative fines⁷ through to suspension (being placed on “inactive status”⁸).

Box 1: IBA International Principles on Conduct for the Legal Profession, Principle 9.1

“CLE ensures that lawyers are able to fulfil their ethical duty to work in a competent and timely manner”.

⁷ See, for example, Law Society of Ontario Rules <https://lso.ca/lawyers/enhancing-competence/continuing-professional-development-requirement/failure-to-comply>

⁸ See, for example, the State Bar of California MCLE Rules - <http://www.calbar.ca.gov/Attorneys/MCLE-CLE/Compliance/FAQ>

What is wrong with CPD?

Although CPD has become the default solution for signalling competence in the profession as a whole, serious questions have often been raised about its effectiveness as an instrument to do more than act as an indicator of best efforts. The following fundamental design flaws are most frequently cited:

i). **There is no agreement on what it is aiming to achieve**

This picks up the earlier point on how the structure of regulation and the type of regulator holding responsibility for in-practice regulation will affect its design. This is especially true of CPD schemes, as the various different motivators for introducing them indicate.

For example, whilst the VLSBC roots its approach to CPD firmly in regulatory objectives:

“The need for CPD programs has long been justified by the need to ensure that the claimed public privileges of practice are matched by a commitment to ensuring that lawyers are competent and unlikely to harm clients through negligence or misconduct”⁹

Others, such as the Law Society of Hong Kong, see a broader portfolio of purposes underlying their CPD scheme¹⁰:

The Law Society of Hong Kong identifies a rationale for CPD (see box 2) that encompasses not only regulatory objectives, but objectives that are in the collective professional (as opposed to public) interest as well as some that are entirely personal to individual lawyers.

These different views on what CPD schemes are for, then feed through into a debate about what counts as permissible CPD.

On the one hand there are the strong advocates of legal education, who argue that only academic study of the law should count against a CPD obligation. Proponents of this point of view suggest that permitting other activities like mental health awareness, making legislation and pro bono all undermine the purpose of CPD¹¹.

Box 2: Law Society of Hong Kong, Guidance on CPD

CPD is a tool to help the professional successfully carry out his professional duties and responsibilities throughout his career.

Duty of a self regulating profession to ensure the establishment and promotion of high standards of work within the profession.

CPD provides a convenient framework for the profession to continuously update knowledge and skills to meet the changing demands of clients and society.

To improve the efficiency and effectiveness of the profession.

To enable some practitioners to redefine their careers by learning new professional skills and areas of practice.

⁹ CPD – Issues Paper, June 2020, Victorian Legal Services Board and Commissioner

¹⁰ Law Society of Hong Kong Mandatory Continuing professional development Information Package, June 2020

¹¹ Shepherd 2006

“As a profession, the law serves the public, not the practitioner. In other words, our obligation to improve our competence is an obligation to assist others, not to benefit ourselves. Awarding CLE credit for programs and activities that benefit attorneys directly and incidentally undermines our efforts to validate the public’s trust”¹².

This assumes that there is no public interest in a wider scope of CPD and that pure black letter law training alone will be sufficient. This is by no means the view that emerges from recent ongoing competence studies by regulators in Alberta¹³ and Victoria¹⁴. Nor is it necessarily the view held by other interested stakeholders.

In Ireland, for example, the Irish network of Free Legal Advice Clinics (FLAC) has argued¹⁵ that participation in pro bono activities not only contributes to the professional development of solicitors and barristers but it also meets a public interest objective of encouraging pro bono work. On these grounds it had advocated for pro bono work to be included in the permissible activities that earn Irish solicitors CPD points.

But there is no consensus on this point. For example, neither pro bono work nor participating in Law Society committees are eligible for CPD in Ontario, whereas both are acceptable in Singapore.

This also illustrates that not all non-law topics are necessarily serving the same interests. Whilst a public interest argument can be made for pro bono work, it is not clear that serving on a Law Society committee serves any interest other than the lawyer’s own.

These differences of opinion matter, as they illustrate that CPD schemes are often set up without a clear objective or a deeply thought through view on what they are trying to achieve and how they are going to achieve it. It also demonstrates that there is far from an agreed universal view of what “maintaining competence” means amongst lawyers (is it keeping up to date with black letter law or continuing to develop skills and behaviours across a broader range of activities?).

ii). ***The measure of how much CPD is needed to maintain competence is based on inputs***

One of the most obvious flaws of many CPD schemes is their implicit assumption that a certain number of hours spent on continuous professional development or learning activities will produce some tangible desired outcome in terms of improved competence.

“Those that argue against MCLE (Mandatory CLE) sometimes quote the old saying ‘You can lead a horse to water, but you can’t make it drink.’ Maybe not, but if you take the whole herd, most of them are going to have a drink.”¹⁶

Even if this were true, it is far from clear that this leads to better outcomes, or that there are not more efficient and effective ways of achieving the same result.

¹² ibid

¹³ Furlong (2020)

¹⁴ Humphries (2020)

¹⁵ <https://www.lsra.ie/wp-content/uploads/2019/09/S34-Submission-FLAC.pdf>

¹⁶ Grigg, (1998)

In an article in the Louisiana Law Review, Georgetown University Professor Rima Serota argued:

*"The 46 states that have adopted mandatory CLE measures since 1975 provide a ready-made source of empirical data to test the proposition that attorneys in these states have a competence advantage over attorneys in non-mandatory states. In 1997, Professor Colleen Graffy found "no statistics indicating a reduction in complaints, disciplinary measures, or malpractice insurance premiums since [mandatory CLE's] implementation", and none have materialized since"*¹⁷.

Other US studies have failed to find evidence of improved outcomes from CLE.

The California Supreme Court noted that in its final report, the California State Bar's Commission to Study Mandatory Continuing Legal Education *"acknowledge[d] the lack of any statistical evidence clearly demonstrating a direct, positive correlation between MCLE and attorney competence."*¹⁸ (Final Report p. 7.) The same was true in Washington DC, where a nearly 200-page report to the DC Bar concluded that there was no empirical data to demonstrate that MCLE courses improve competence¹⁹.

This scepticism about the efficacy of input measures has been echoed in Canada:

*"Putting significant resources into training activities, even in extremely sophisticated and well-planned environments, is no guarantee of improvement in the skill level of the concerned employees, and even less so of a proportional increase in their productive performance"*²⁰

iii). ***These input measures are arbitrarily determined***

There also appears to be little consensus around the world about how much time lawyers should be required to spend on continuous learning and development, as shown in figure 4 (above).

In Slovenia, for example, a lawyer must undertake 8 hours of CPD a year, in Ireland the requirement is currently 20 hours for solicitors. Does this mean that Slovenian lawyers are more competent than Irish solicitors because they need less CPD? Or less competent because they undertake less CPD?

An Irish Solicitor would be required to undertake 20 hours of CPD in Ireland, but on establishing a practice and moving to Spain would not have to undertake any CPD as Spain has no mandatory scheme and the Irish solicitor does not need to fulfil CPD conditions out of the country. If CPD signifies competence, is such an individual no longer required to be competent because they are not in Ireland?

CPD requirements also have a habit of growing, as adding a CPD module on a particular issue (e.g., anti-money laundering) is an easy way to deal with new obligations. Increasing requirements do not escape the notice of the profession. In Ireland, the Dublin Solicitors Bar Association (DSBA) voiced its disquiet on this point when responding to a consultation

¹⁷ Sirota (2018)

¹⁸ Cited in California Supreme Court Judgement (People v. Ngo (1996) [No. S049006. Oct 24, 1996.]),

¹⁹ Sirota (2018)

²⁰ Bouteiller (1996)

issued by the Legal Services Regulatory Authority (LSRA) in 2018²¹. The Association argued that it was not right that the annual CPD requirement should be determined solely by the Law Society, without any consultation with solicitors or law firms in general. They also pointed out that CPD requirements had increased steadily from 10 hours in 2008 to 20 hours in 2018 without, the DSBA claimed, any empirical justification. The DSBA also criticised the absence of standards, or monitoring of standards, in relation to CPD delivery – a common complaint across many jurisdictions and discussed in more detail below.

There are also many jurisdictions where CPD brings in revenue to those who determine the amount of continuous training lawyers must undertake, either directly through courses which they provide directly or indirectly through the operation of accreditation schemes for third party providers. In 2019, the Hong Kong Law Society made around 3% of its annual income from offering CPD²², whilst the Law Society of Ireland garnered 12% of its revenue from ongoing education and training²³.

iv). ***CPD can become meaningless when driven by compliance alone***

Many CPD systems go into quite a lot of detail about the form in which continuous development should be undertaken (see [New South Wales Law Society CPD - Cap on activities](#) for a particularly complex example) but may make little or no stipulation about the content or standard of that CPD, and its relation to the area in which a practitioner operates.

The phenomenon of corporate lawyers, for example, signing up to courses in family law in order to meet their required points target before the reporting deadline, is well-known and referenced, for example, in the VLSBC's recent review of CPD²⁴.

There are also other ways for lawyers to fulfil most or all of their CPD requirements with minimal effort:

- Attendance at the IBA annual conference in Seoul in 2019, for example, could have earned a delegate 25 hours of CPD for a one-week conference (enrolment fee US \$4,080). Since there is no monitoring of who attends any particular sessions at this conference, 25 hours of CPD could have been earned for sightseeing and marketing to other law firms.
- The Los Angeles County Bar Association has found a way to fulfil all of the State Bar of California's requirements through a downloadable program of 25 hours of [CLE in a Box](#) (also available on flash drive for \$299). This does however require the signature of a witness to say that the attorney did watch or listen to all 25 hours, but this is not easy to verify.

In its evidence to the Irish LSRA's 2018 Consultation on the Legal Education and Continuing Legal Education System for Legal Practitioners, the Irish Legal Aid Board, expressed scepticism about the effectiveness and relevance of current CPD arrangements for both solicitors and barristers. This was based largely on the lack of any relationship between requirements for continuing professional development and a practitioner's area of actual practice.

²¹ <https://www.lsr.ie/for-innovation/our-consultations/>

²² http://www.hklawsoc.org.hk/pub_e/about/report/ebook/AR_2019/index.html

²³ <https://annualreport.lawsociety.ie/media/1828/ar2020-financeconsolidated.pdf>

²⁴ Humphries (2020)

This is a point that is often flagged in relation to specific areas of practice where lawyers may need to ensure that they are up to date, not only with the law, but also with guidance and best practice in handling vulnerable clients, and that they are able to apply this knowledge in practice. For example. The VLSBC Final report on CPD²⁵ (2019) cited the recent Royal Commission on the Management of Police Informants which concerned a case in which a Victorian defence barrister acted as an informant to the police.

The report of the Royal Commission²⁶ focused mainly on the police but it does note in relation to legal practitioners that:

“Legal ethics education is integral to supporting lawyers’ understanding and application of their ethical duties and obligations in practice, as well as their ongoing professional development. Embedding legal ethics education in lawyers’ continuing professional development, including through the use of practical, scenario-based learning, would support them to understand the common ethical issues that can arise in legal practice and enhance their skills to manage those issues. Strengthening awareness of and access to the various ethical supports that are available to lawyers is also important”.

This leads the Commission to recommend:

“That the Victorian Legal Services Board and Commissioner, within six months, issues clear guidance about how legal ethics education should be embedded in the four compulsory fields of continuing professional development, including through the use of practical, scenario-based learning”. (Recommendation 84)

And

“That the Victorian Bar, within six months, develops ethics guidance on specific conflict of interest issues and scenarios that can arise for criminal defence barristers”. (Recommendation 81)

v). ***It imposes a significant cost on the profession***

CPD schemes can impose costs on the profession in a number of ways. Costs which will to a greater or lesser extent ultimately be borne by clients.

In her article on ‘Making CLE Voluntary’²⁷ in the Louisiana Bar Review, Professor Rima Serota argued:

“Projecting from the best data available, approximately 950,000 attorneys will fulfil approximately 11.5 million mandatory CLE hours in 2017... mandatory CLE tuition revenue for 2017 reasonably can be estimated at a minimum of \$345 million”.

The scale of these US figures seems to be supported by figures derived from the Victorian Legal Services Board and Commissioner (VLSBC)’s recently published Review of Continuing Professional Development for Victorian Lawyers. This noted that:

²⁵ Ibid

²⁶ <https://www.rcmpi.vic.gov.au/>

²⁷ Sirota (2018)

“Over half (55%) of questionnaire respondents (or their employers) spent \$1,000 or less on CPD activities each year. Nineteen percent spent between \$1,000 and \$3,000 while 24% did not respond to this question. The average hourly rate for CPD seems to range between \$50 and \$150”.

Based on the number of registered Victorian lawyers and the mandatory 10-hour CPD requirement, this amounts to an annual spend on CPD of around AUS \$24.5 million²⁸.

On top of CPD course fees and the cost of time invested by lawyers in attending courses, the cost of managing a compliance system has to be added.

In its 2020 Issues Paper on CPD,²⁹ the VLSBC also reported on an exercise it had undertaken in 2017 to calculate the costs to it as a regulator of administering a CPD compliance scheme. This analysis found that CPD compliance activities added approximately AUS \$10 to each Victorian practising certificate and cost AUS \$0.19 million in total, representing just under one percent of total regulatory costs.

These cost considerations bear particularly heavily on those lawyers and legal practices working on the tightest margins, often those who are serving the most vulnerable and underserved populations.

Whilst it is not unreasonable to expect learning and development to be a cost, it is important to ask whether these costs are delivering effectively on the desired outcomes. Unfortunately, this is a question that is rarely, if ever, answered, by empirical studies on the efficacy of CPD.

vi). ***Much of what is on offer is not very good***

A further common complaint in many, but by no means all, jurisdictions, is that the quality of CPD provision is weak and that in practice it is largely unregulated. The Illinois Supreme Court Commission on Professionalism, for example, has been running periodic surveys on CLE and the feedback regularly picks up on issues of quality, lack of focused outcomes and value for money.

“Unfortunately, it seems that a good part of the CLE Program is aimed at providing an additional income stream to the Illinois Bar. Much of the CLE is costly! It also appears that many instructors, enticed by the prospect of making money off the CLE Program, have jumped on this “cash cow.”³⁰

“The primary rationale for mandatory CLE is to help ensure competent client representation, but the mandatory system fails to achieve that goal. Instead, mandatory CLE has become a self-perpetuating industry that earns hundreds of millions of tuition dollars for course purveyors but demonstrates little, if any, connection to better serving the public”³¹

²⁸ <https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-annual-report-2019-2020.pdf>

²⁹ <https://apo.org.au/sites/default/files/resource-files/2020-06/apo-nid307968.pdf>

³⁰ See lawyer feedback in various Illinois Supreme Court Commission on Professionalism Surveys <https://www.2civility.org/attorney-programs-cle/cle-best-practices/>

³¹ Sirota (2018)

These longstanding concerns³² have led interested parties in various jurisdictions to call for tighter control on the accreditation of CLE/CPD. For example, a 2009 summit³³ between the American Legal Institute-American Bar Association (ALI-ABA) and the Association for Continuing Legal Education (ACLEA) recommended that regulators of CLE in different US states should develop accreditation standards for CLE providers. Most State regulators of CLE in the US now have some criteria for accrediting individual courses but instead of setting out some real quality criteria, these are generally based on a tick box assessment of a course or conference, which focuses on its duration, content, and speakers³⁴.

There is as yet, little evidence that such accreditation processes involve any focus on learning outcomes nor that they apply any lessons from the literature on adult learning methods in their accreditation processes.³⁵

vii). ***The profession often doesn't like it, nor do they understand why they are expected to do it***

All of these criticisms amount to one very common thread – many in the profession do not like or support the CPD schemes they have ended up with.

*"I believe I, and most attorneys would be better off spending the money on legal research for our offices than these expensive and in most cases, poorly written materials and lectures. I would like to see published statistics showing that mandatory CLE has substantially improved the profession and greatly reduced the claims of malpractice and negligence regarding a lawyer's handling of a client's case."*³⁶

*"Bar leaders in Arizona and elsewhere began with an undisputed fact—that attorneys must constantly increase their knowledge. Then they added a mistaken assumption—that we don't. From this shaky foundation, they concocted a dysfunctional solution to a non-existent problem, ordering us to "learn" on the state's official terms and timetable. Thus we were shackled with the costly and largely useless MCLE program."*³⁷

This reveals a large part of the underlying problem with CPD. If it purports to be about ensuring that practitioners have up to date legal knowledge for their areas of practice then the question has to be asked why, for example, a criminal lawyer of 30 years standing might have exactly the same durational learning requirement as a newly admitted conveyancing lawyer? The illogicality of this is a major part of the buy-in problem for the profession. On top of which, there is no real culture of lifelong learning introduced into the profession in most jurisdictions. The process of qualification for many lawyers is so long and daunting that learning that this is just the beginning of a career of self-improvement is not what most want

³² See also for example, <https://www.rocketmatter.com/featured/the-least-miserable-way-to-earn-cle-continuing-legal-education/> ; <https://abovethelaw.com/2019/04/cle-requirements-are-usually-a-big-waste-of-time/> ; <http://lawyersandliquor.com/2019/01/constant-low-effort-part-2-the-practical-problems-with-cle-requirements/>

³³ https://www.clereg.org/assets/pdf/Critical_Issues_Summit-Final_Recommendations.pdf

³⁴ See for example the example of the Florida Bar's CLE provider accreditation process <https://www-media.floridabar.org/uploads/2020/04/CLE-Application-for-ACCREDITATION-ADA-FILL-IN.pdf>

³⁵ <https://www.ispringsolutions.com/blog/adult-learning-theories>

³⁶ <https://www.2civility.org/attorney-programs-cle/cle-best-practices/>

³⁷ MCLE – the Joke's on us, Arizona Attorney August 1999, Available at <https://www.myazbar.org/AZAttorney/Archives/Aug-Sept99/mcle-con.pdf>

to hear. It also reveals a cultural problem with the legal profession, which prizes its independence so much in many jurisdictions that it has shut itself off from other influences and it is not staying in touch with evolving business and economic theory, psychology and even with social and cultural change.

viii). ***It is not enforceable***

A final flaw that characterises most CPD systems as regulatory tools, is that they are not easy to enforce. Whilst the rules in many jurisdictions state that the failure to fulfil CPD requirements could constitute a rule breach, or even, as in the case of Australia's Uniform Law³⁸, a civil offence, there is little evidence of action by regulators in this area. In its recent CPD Issues Paper, the VLSBC acknowledged that although it has the power to take action against lawyers, it has never used them in relation to non-compliance with CPD rules.

In the US, the enforcement challenge for regulators has been made even more difficult by a decision of the California State Supreme Court in the *People v Ngo* (1996)³⁹ in which the Supreme Court stated that:

"We think it illogical to conclude that a California attorney, presumptively competent on day one, becomes incompetent on day sixty-one merely by virtue of MCLE noncompliance. Moreover, if an attorney's involuntary enrolment on inactive status for noncompliance with MCLE requirements were indeed deemed the equivalent of a finding of incompetence, as the Court of Appeal apparently reasoned, it would be anomalous to permit the attorney's administrative reinstatement simply on submission of proof of compliance consisting of little more than a collection of attendance records."

If non-compliance with CPD requirements has no real consequences then it is hard for such schemes to be taken seriously.

The next section addresses what different jurisdictions are doing to tackle these flaws in CPD schemes and the modifications that have been introduced over time to make them more meaningful.

Part 3: What is being done to improve CPD

In recent years, lawyer regulators around the world have sought to improve the ability of CPD to improve competence in a number of different ways, increasingly moving away from a generic durational requirement.

i) ***Linking of CPD to the focus of a lawyer's practice***

Some systems now require lawyers to complete professional learning and development in the area of practice in which they specialise. In Belgium, the French and German Speaking Lawyers' Order (OBFG) requires this form of CPD to make up at least two-thirds of the 20 points required per year (1 point=1 hour). The German

³⁸ Applicable in New South Wales and Victoria

³⁹ *People v. Ngo* (1996), No. S049006. Oct 24, 1996,

Bar (BRAK) requires (15 hours of specialist study for each area of a lawyer's registered specialist practice) whilst in the Netherlands 10 points of CPD are required for each specialist practice area registered.

How this helps?

This approach may help to encourage the development of greater expertise in a particular sector or practice area, and serves both a lawyer's own personal interest and the wider public interest goal of ensuring that lawyers are up to date with the latest law and procedure. However, as evidence suggests (e.g., see case study on Victoria) this is the area of CPD which lawyers will tend to be most enthusiastic about undertaking, it is questionable whether it needs to be specified as a particular requirement. This is also borne out by other survey feedback on CPD/CLE systems⁴⁰, which suggests that keeping up to date with one's practice area is obvious to most lawyers and directly linked to their positioning within the sector.

ii) Specification of requirements for particular practice areas

There are some CPD systems that are now going beyond simply requiring study to be in the area of a lawyer's main practice area, to require additional special training in order to gain, or continue, a right to practise. In Northern Ireland, for example, solicitors who undertake a conveyancing transaction in a practice year must complete 3 hours of CPD conveyancing courses, although it is unclear how this is monitored.

How this helps?

This sort of measure is close to the more formal accreditation schemes that exist in a number of jurisdictions. These are covered in more detail in the next section.

iii) Specification of An Ethics Component within overall CPD Requirements

One refinement to a general hours-based CPD system is the introduction of a supplementary requirement that a certain proportion of overall hours are devoted to ethics (and or professionalism). This is particularly common in the US but is also becoming prevalent elsewhere:

- In Europe, requirements range from only 2 CPD ethics points to be earned every 5 years (Belgium - Flemish Lawyers' Order (OVB)), through to 5 hours in Norway and 6 hours in Cyprus.
- The French Bar (CNB) now specifies that 10 hours of ethics training must be completed by an avocat during their first 2 years of practice,
- The Law Society of Ireland requires 2 hours of ethics to be undertaken every year, but this rises to 3 hours if the solicitor is a sole practitioner and/or compliance partner.

How this helps?

This serves a public interest goal. But whilst devoting a certain proportion of the overall CPD requirement to ethics means that practitioners do at least have to think about what this might entail, most systems do not go into any details about what might be required. Consequently, many activities of variable quality and use are designated as "ethics CPD".

⁴⁰ <https://abovethelaw.com/2015/03/cle-this-is-how-you-do-it/>

iv) *Linking of CPD to particular roles*

Some systems link CPD requirements to particular roles. Those using this type of approach include:

- New Zealand Law Society – has specific CPD requirements for those with fiduciary responsibilities. Any solicitor or barrister running a trust account must first complete the NZLS Trust Account Supervisor (TAS) course.
- Law Society of Ireland - solicitors with compliance responsibilities (including sole practitioners) must undertake mandatory training in accounts and anti-money laundering compliance.
- Law Society of Northern Ireland – solicitors in private practice must devote 2 hours of study to risk management and solicitors who wish to become a partner must complete a Practice Management Course.
- Law Society of Scotland - a solicitor who has become a manager of a practice must attend a practice management course within twelve months of becoming a manager.
- The Law Society of Alberta has just announced that it will develop, or oversee, the development of a mandatory information and training program that must be completed by all lawyers entering sole practice.

How this helps?

This approach serves regulatory objectives, as well as public interest objectives relating to the sound management of law firms and AML compliance, rather than a lawyer's own self-development interest. It ensures that at least those taking on specific roles have been exposed to more than just the expectations of those roles as set out in the rules. Running courses like this is an opportunity to influence behaviour across a particular cohort of the profession but may only be truly effective if this sort of activity is used as a starting point for ongoing engagement with those holding such responsibilities, thus overcoming the weakness of relying purely on input measures.

v) *CPD to promote better practice management*

In some jurisdictions CPD requirements have been adopted in order to improve the sound management of law offices. In California for example:

“activities relating to the management of a law practice or law office.. are eligible for approval if they have significant practical content, are directly relevant to attorneys and are related to the practice of law. They include:

- *Case management and effective calendaring*
- *Malpractice avoidance*
- *Maintenance of ethical attorney communications and attorney-client relationships*
- *Ethical management of client trust funds and other law office financial affairs*
- *Operational management of a solo law office, law firm or corporate law department”*

These are not mandatory CPD activities for those running offices, only ‘eligible’ as approved CPD activities but that, at least, may encourage attorneys to focus on such

topics. In New South Wales, on the other hand, every solicitor must complete one unit (=one hour) of CPD in practice management and business skills every year. A non-exhaustive list of what is permitted under this heading includes: Risk management, file management, cost rules, business planning, financing a practice and effective use of technology.

How this helps?

This requirement can support both regulatory and client interests. As with the specified ethics requirement, having a dedicated practice management and business skills requirement at least ensures that solicitors must give some thought to the topic annually. But the impact of this requirement on the competence of NSW solicitors in this area, and whether this has fed through into better run law firms, has not yet been assessed.

vi) *CPD requirements linked to career stage*

CPD is not only regarded in many jurisdictions as a general tool for maintaining public trust, but also as an instrument for fixing perceived systemic competence issues. The US mandatory CLE movement really began in earnest in the 1960s and 1970s, as mandatory continuous legal education was seen as a potential solution to the explosion of law school graduates and the accompanying concern that this would lead to a decrease in professionalism and the quality of legal services.

Many US states now run “new attorney” programmes which are designed to introduce new qualifiers to “applied professionalism”. These programmes attempt to equip new lawyers with the basic skills necessary to practice competently and attendance will fulfil a year’s CLE requirements.

In North Carolina, for example, the programme is conducted over two full days of tutorials which include: Why Professionalism Is Important to You?; Overview of the North Carolina State Bar; Inner Workings of the Law Office; Technology and Your Responsibility to Your Clients; Getting Lost in Our Own Lives; Dealing with the Courts; What I Didn’t Learn in Law School; The Attorney-Client Relationship; Ethics and Grievance Committees; Pro Bono Service in North Carolina; How to Win in Trust Account Management; Financial Planning Strategies; A View From the Bench: Cases and Examples of Professionalism and the Challenges of Being a New Lawyer; Professionalism Insight and Voluntary Oath.

In California, the compulsory new lawyer programme includes: 4 hours of legal ethics; 3 hours of basic skills; 1.5 hours on competency (substance abuse, mental health issues) and 1.5 hours on recognition and elimination of bias in the legal profession. The training is provided as an e-learning course through the California State Bar’s website and thus all new attorneys get the same experience.

In Ireland, all new barristers must undertake the New Practitioners’ Programme which is specifically designed to cover many areas of practice and procedure in the courts, practice management, ethics, legal areas such as employment law, family, law, ADR etc.

There has been little focus on practitioners at any other stage of their careers other than the first year within CPD programmes. Indeed, many schemes (e.g., Singapore) reduce requirements for professionals at later stages of their careers or provide exemptions. Others provide more flexibility e.g. The Law Society of Alberta has recently announced its intention to introduce an optional alternative system of continuing learning for lawyers with more than 20 years’ experience in the profession.

Lawyers in this group can opt to fulfil their CPD requirements by mentoring, lecturing, or carrying out pro-bono work.

How this helps?

There is a pretty universal focus in legal professions around the world on the need to inculcate younger lawyers with professional values. This then raises the question of what CPD is for, since a system that was focused on e.g., reducing risks to competence, might instead focus on other demographic cohorts within the profession and on the specific issues that they might face (e.g., mental health, addictions, financial problems related to mid-career issues; end of career difficulties etc). The Law Society of Alberta is also proposing to require all solo practitioners to lodge a business succession plan with it in future. The process of drafting this plan is not covered in the Law Society's recommendations as an activity that could count for CPD but adopting this kind of approach is an example of how CPD could be used to nudge behaviour in a direction that contributes to managing risk more effectively.

vii) CPD designed to encourage new or different attitudes and behaviours in the profession in areas of 'Universal Competence'

The Law Society of Alberta has announced as part of its ongoing competence review that it will periodically supplement the continuing learning efforts of its lawyers with mandatory activities and initiatives designed to address competence in areas of universal relevance. These could include professional conduct, cultural competence, access to justice, and health and wellness. The focus on cultural competence will begin by picking up the recommendations of the Truth and Reconciliation Commission⁴¹ in relation to the legal sector.

In California attorneys must undertake at least one hour of CPD every 3-year CPD cycle in an area called the Recognition and Elimination of Bias in the Legal Profession and Society.

And in Illinois: "*attorneys must complete six hours of professional responsibility⁴² CLE in every two-year 30-hour overall CLE requirement... Attorneys must take one hour of diversity and inclusion CLE and one hour of mental health and substance abuse CLE as part of these six hours*"⁴³.

How does it help?

This addresses the public interest need for certain attitudes and behaviours to be introduced profession wide. This is particularly important where such attitudes or behaviours might not be recognised within the profession itself as needing attention and therefore not be addressed by self-reflective CPD plans.

Summary

The above list sets out seven different ways in which general hours-based CPD schemes have been supplemented with specific sub-requirements in order to target their attempted impact on lawyer competence more effectively. What many of these have in common is that

⁴¹ <http://nctr.ca/reports.php>

⁴² Defined as "professionalism, diversity and inclusion, mental health and substance abuse, civility, or legal ethics".

⁴³ <https://www.mcleboard.org/files/AttorneyMCLERequirement.aspx>

they are regulatory or public interest driven and thus not necessarily areas of learning that lawyers would have chosen left to their own devices. Certain types of compulsory courses (e.g., in areas like diversity and bullying etc) may be resisted by those who need them most and may only be gestures towards effecting real change (e.g., one hour in a three-year period on an ethical topic will not have any noticeable effect on attitudes or behaviours).

At best, therefore, they can only be a starting point for nudging lawyer attitudes and behaviour. Their success as instruments in addressing competence in any particular area will also rest on the existence of additional regulatory and market measures to reinforce/supplement profession-wide learning.

A further issue to note is that these specific requirements usually sit within an overall specified hours requirement. In some cases, multiple specific requirements can co-exist, resulting in very complex CPD schemes that can seem incoherent. There are lawyers who do not understand that CPD might have a role beyond developing their own knowledge of law and who resist the idea of public interest or compliance-based CPD. This suggests that there may be a need to communicate more effectively to the profession that there are different layers of competence and that not all competence related activities should necessarily be focused on an individual's area of practice.

In conclusion, whilst CPD inevitably has a role to play, in some form, in maintaining ongoing competence in lawyers, it cannot carry this burden alone. A wider framework is needed to address this issue and CPD will sit within it.

Part 4: So what else is being done to try to improve Lawyer Competence?

Although hours-based CPD remains the main instrument used around the world to promote lawyer competence, such schemes cannot escape the fact that they are, at best, blunt instruments. Tweaking the requirements of overall hours based CPD, as described in the previous section, is therefore only part of the picture.

Below is a collection of a further competence related instruments which are sometimes adopted in various combinations, alongside points-based CPD. For the purposes of this report, they are divided here into, (a) ex-ante measures that may be used prior to the legal service being delivered, and (b) ex-post measures which are used afterwards. It is important to note that these measures are not always identified by the regulators who use them as explicitly designed to enhance competence.

(a) Ex-Ante Measures

i). ***Move to self-reflection instead of hours based CPD***

The weakness of hours, or points-based CPD systems is prompting more jurisdictions to move towards a model of self-reflection, output focused or outcomes focused continuous development. Such systems are now in operation in Alberta, Austria and in a hybrid form in New Zealand and the Netherlands, with Victoria recently announcing that it too will be moving in this direction.

“The annual 10-point threshold is useful for ensuring a minimum commitment from all practising lawyers but has a negative impact on the way that they think about their learning needs and seek out relevant learning and development opportunities. A reflective, planned approach to learning and development needs is one of the best ways to overcome the compliance-driven rush to accumulate points in February and March each year.”⁴⁴

Self-reflection models of CPD will usually include the following elements:

- An assessment of learning needs – in the case of the Alberta system this should be done using the Law Society’s six core competencies as a guide (see box 3).
- The development of a learning plan to close the gap between their current level of competence and where they have identified they should be.
- The execution of the learning plan and further re-assessment to be carried out in a continuous learning loop.

Whilst this kind of approach has a solid foundation in adult learning theory, concerns have been expressed in some quarters that without a mandatory hours requirement, lawyers will not engage in a meaningful way with self-reflection.

Box 3: Law Society of Alberta’s Core Competences

1. Ethics and Professionalism
2. Substantive Legal Knowledge
3. Client Relationship Management
4. Practice Management
5. Oral and Written Communication, Analytical and Research Skills
6. Wellness

In Jordan Furlong’s recent report for the Law Society of Alberta’s on “Lawyer Licensing and Competence”, he notes that one of the motivations for launching a review was:

“a belief that the “self-assessment” CPD system lacked accountability. There was concern that the system did not ensure that lawyers actually were engaging in any professional development activities or actually were maintaining or improving their competence”.

The report recommends that the Law Society develop a system by which lawyers are randomly contacted and interviewed about the content of their learning plans and the progress they are making towards achieving their learning outcomes.

ii) Self-assessment

In 2021 the Netherlands Bar (NOvA) is launching a new tool to assist lawyers with their self-assessment. This differs from self-reflection to determine learning needs and is rather an online, interactive tool to help lawyers reflect on their own actions as a professional. The questions in the tool are derived from a study by Erasmus University⁴⁵ into the “craftsmanship” of lawyers. In order to encourage lawyers to use this tool they will earn 1 point of their annual CPD requirement for undertaking the assessment.

⁴⁴ Humphries (2020)

⁴⁵ <https://www.advocatenorde.nl/document/rapportage-vakmanschap-advocatuur-maart-2020>

This is an interesting initiative which provides a basis for the NOvA to stimulate interest in a lifelong learning culture. It also sits alongside and complements a raft of other measures they have introduced recently to improve lawyer competence (See NOvA case study in the Annex).

iii) Mentoring and Coaching

One of the other recommendations made in Furlong's report on "Lawyer Licensing and Competence in Alberta" is that the Law Society should encourage all newly admitted lawyers to develop one or more mentoring relationships throughout their first three years in the profession.

Suggestions like these tend to focus on new entrants to the profession, largely, no doubt, in order to fill perceived gaps which are not being effectively addressed by traineeships or periods of apprenticeship (see previous section CPD linked to career stage for further examples). The proposal for a new mentoring scheme in Alberta is not unique to North America, as such schemes have become increasingly commonplace in the US⁴⁶.

The longest established mentoring programme has been running in Georgia since 2006 when the State Bar of Georgia launched a mandatory CLE programme for newly admitted lawyers called [The Transition into Law Practice Program](#). This followed the evaluation of a 1999-2001 pilot⁴⁷ which was deemed to have been highly successful.

This new mandatory programme:

- Emphasises lawyering skills as well as the lawyer's relationships with clients, other lawyers, the courts, and the public.
- Sets out a CLE curriculum which is intended to lay the groundwork for the activities and discussions between the mentor and newly admitted lawyer about the basic precepts of law practice, practical skills, and ethical and professionalism norms.
- Requires each mentor and newly admitted lawyer to develop a Mentoring Plan tailored to their circumstances. It can be integrated into a training program that a law firm or organization may already have in place. The Mentoring Plan must be completed in the first year after admission to the Bar.

Whilst this reflects a fairly widespread concern about declining skills in new lawyers (a concern which incidentally has always existed), it does also raise questions about the skills and competencies of more experienced lawyers.

In its "Building a Better Bar" report the Institute for Advancement of the American Legal System (IAALS) identified a need for supervising and training partners to be able to mentor and give feedback effectively in order to support newly admitted lawyers in turn. One lawyer at a large firm is reported to have stated:

"many supervisors need to improve their feedback style because "that's one of the things that we did not learn in law school, and it has to be taught."

⁴⁶ [Mentoring helps new and experienced lawyers make the connection, ABA Bar Publication 2006.](#)

⁴⁷ https://www.gabar.org/membership/tilpp/upload/TILPP_Report_011608.pdf

Learning how to self-reflect and assess needs, thinking about adult learning and being open to coaching as well as passing on knowledge through mentoring, are themes which are only now beginning to be broadly addressed in the legal sector. There are a growing number of mentoring schemes, especially in the US and increasingly these are recognising mentoring as a way for more experienced lawyers to earn CLE/CPD.⁴⁸

iv) Specialist Certifications

There are a number of CPD systems which are supported by specialist certification schemes. Under these schemes, lawyers are encouraged to obtain specialist certifications which they can use as a marketing tool. Such certificates are also designed to give a greater degree of confidence to consumers that they are dealing with a lawyer who is experienced in the designated area of law. Lawyers in jurisdictions offering such specialisations are usually encouraged to obtain a significant proportion, if not all, of their CPD requirement in the area of their certification.

Perhaps the most longstanding of such schemes are those that exist in the US and the history behind their establishment sheds some light on their underlying purpose – which is as much for the benefit of the lawyer as the consumer. In 1977, the United States Supreme Court allowed states to regulate advertising by lawyers⁴⁹ to the extent necessary to prevent “false, deceptive, or misleading” communication. Prompted by this decision, 12 states adopted specialty certification plans to deal with the proliferation of claims by lawyers that they were specialists.

A typical example is the North Carolina Legal Specialization scheme. Lawyers seeking a North Carolina certification have to be licensed and in good standing in North Carolina, they have to have had substantial involvement in their chosen field of specialty for five years, complete a certain number of CLE credit hours in the three immediate years prior to application, provide references from lawyers in the field and pass a six-hour examination. Certifications can be obtained in 13 areas: Appellate practice, bankruptcy law, criminal law, elder law, estate planning, family law, immigration law, privacy and information security law, real property law, social security disability law, trademark law, utilities law, workers' compensation law.

Certification offers lawyers, inter alia, profile in a specialization directory and access to a “media kit”. Once certified, attorneys must return an Annual Statement verifying that they continue to meet the requirements for certification and a CLE statement every five years. There is no examination required for recertification.

In Australia, similar schemes have grown up in recent decades with similar objectives. In New South Wales (NSW), for example, a solicitor can apply to become a specialist in one of 14 areas, ranging from “business law” to family law and tax law. The declared purpose of the specialisation scheme is to:

- Provide the profession and public with a reliable means of identifying a practitioner with proven expertise in their chosen area of law.
- Contribute to and encourage continued development and improvement of standards, quality, and delivery of legal services.
- Promote the advancement of legal knowledge and skills; and

⁴⁸ <http://www.legalmentoring.org/mentoringprograms.php?id=20>

⁴⁹ *Bates and O’Steen v. State Bar of Arizona*, 433 U.S.350 (1977)

- Provide practitioners with the opportunity to demonstrate expertise in their chosen area of law and to have this recognised.

Every year NSW solicitors have to complete 10 hours of CPD in the area of law in which they have been granted a specialist certification.. This requirement may overlap with the statutory requirement⁵⁰ for NSW solicitors holding practising certificates to complete 10 hours of CPD per year but is unlikely to fulfil it entirely. All NSW solicitors must undertake at least one hour of ethics and professional responsibility CPD, one hour of practice management and business skills CPD and one hour of professional skills CPD, in addition to at least one hour of knowledge based CPD, within their ten hour requirement. Anyone holding a specialist accreditation will therefore most likely have to do slightly more CPD than those not holding such accreditations. .

In the case of Germany, CPD is only required by those lawyers who hold a designation as a specialist lawyer ("Fachanwalt"). In order to become designated as a specialist, a lawyer will need to accumulate expertise in a certain number of cases over a minimum of six years (e.g., 100 cases in employment law, 120 in family law and 160 in traffic law). In addition, each specialist area also requires the completion of 120 hours of theoretical training. Around 49,000 specialist titles have been awarded in 22 different specialist areas. This number equates to around 30% of the German legal profession but it is unclear how many lawyers are actually holding specialist titles as it is possible for a lawyer to hold more than one (up to two are permitted). To retain the specialist title, a lawyer must complete 15 hours of CPD per year.

Although these schemes purport to be about providing some quality guarantees to consumers, it is not clear that they are helpful. For example, it is not obvious in some schemes why some practice areas merit the opportunity to gain certified status as a specialist lawyer and others do not. In most countries operating these schemes (perhaps with the exception of Germany), there are more lawyers who have chosen not to take specialist certifications than have, which may not necessarily provide the consumer with any greater clarity. Interest in these additional certifications is also waning, in Texas for example, the Texas Board of Legal Specialization reported in 2006 that there were around 8,303 Texas attorneys who were board certified in any specialty. But by January 2021, this number has fallen to 7,300. Meanwhile the overall number of lawyers licensed in Texas has grown from 77,000 to over 92,000 during the same period.

Overall, specialist certifications may encourage lawyers to think about their knowledge of an area of law in which they focus, but such schemes come with risks:

- They primarily benefit lawyers as a marketing tool and do not address many other areas of competence (e.g., ethics, behaviours, attitudes etc) which may need attention.
- They do not help consumers to choose between those lawyers holding specialist qualifications and in jurisdictions where more than one specialist accreditation exists, decide which one might indicate a lawyer more suited to their needs.
- They can be expensive to obtain. The Law Society of New South Wales, for example, charges AUS\$1,100 to obtain a specialist certification.

⁵⁰ <https://www.legislation.nsw.gov.au/view/html/inforce/current/sl-2015-0242#statusinformation>

- They are not awarded with equal rigour and may therefore be misleading to consumers seeking assistance across borders. Different schemes have different requirements and different degrees of rigour in relation to tests of specialist knowledge and experience (e.g. examinations and the submissions of portfolios and references). Most require lawyers to complete a period of specialist experience and sit an additional formal assessment/examination in order to gain a specialist certification (e.g., NSW Law Society, Germany, France). However, some of the Law Society of England and Wales' specialist accreditation schemes (e.g. personal injury, family law and clinical negligence) are awarded purely on the basis of the submission of a portfolio of work experience.
- Most jurisdictions running such schemes do not require specialist lawyers to fulfil ongoing CPD requirements that are significantly more onerous than the requirements imposed on any other lawyer in the jurisdiction. In most cases, the CPD required to retain a specialist designation can be counted against annual CPD requirements and additional CPD is only required if there are specific non-practice area demands to be fulfilled (e.g., the completion of ethics or practice management units)

v) **Accreditation**

Accreditation systems differ fundamentally from specialisation schemes:

- A specialisation scheme allows a lawyer to market themselves as having more experience or expertise in a particular area than others who are allowed to practise in that area of law.
- An accreditation scheme is an additional qualification that a legal practitioner must obtain before they can practise in a particular area.

Accreditation systems have a regulatory intent at their heart. There are fewer pure accreditation systems in place than might be imagined – most tend to relate to rights to practice in higher courts (e.g., rights to appear before the Cour de Cassation in France) but the approach is also used in relation to specialist areas such as legal aid (e.g. criminal legal aid panel accreditation in Victoria for example) or Hong Kong's Parenting Co-ordinating Panel⁵¹, for family law. In all these cases, specialist experience is required but there may be other requirements (e.g., the completion of specialist courses). This raises the question of what qualifications might be necessary to practise in any particular area and who might decide, based on what criteria and assessment of risk. The Irish Criminal Bar Association (ICBA), has for example, queried why registration with the Criminal Legal Aid Panel, administered by the Department of Justice & Equality, is open to any barrister with more than six months' standing. The ICBA has raised the concern⁵² that there is no requirement that a barrister be proficient in criminal law or up to date on criminal jurisprudence when joining the panel, suggesting that there is a need for practitioners to fulfil both a threshold requirement and an ongoing competence requirement in order to practise in this area.

It is important that decisions on what areas of practice might require additional accreditation, beyond a basic legal qualification, are taken systematically. History illustrates that it is easy for marketing specialisations to harden into barriers to entry and act in a similar way to accreditations, even where this may not be warranted.

⁵¹ https://www.hklawsoc.org.hk/pub_e/pcs/coordinator.asp

⁵² ICBA's evidence to LSRA Section 43 consultation <https://www.lsr.ie/for-innovation/our-consultations/>

An example of this is the American Board of Certification, which deals with specialisation in bankruptcy and creditors' rights law. This is a marketing scheme which has been able to give its members a competitive advantage by gaining recognition in the US Bankruptcy Code section 330. This requires courts to take into account a lawyer's membership of the American Board of Certification (ABC) and award higher costs to lawyers involved in bankruptcy cases who hold this certification (11 U.S.C. § 330(a)(3)(E)). So, although regulators have not determined that there is any public interest need for those involved in a bankruptcy case to be represented by a lawyer enlisted with the ABC, lobbying by that organisation means that most bankruptcy lawyers would want their certification.

(b) Ex-Post Ongoing Competence Enhancing Tools

Many of the ex-ante tools reviewed above connect with, or have their roots in, traditional CPD. Ex-post measures are often very different, connecting more obviously into disciplinary systems. However, even though ex-post ongoing competence tools may not always be recognised as such, they directly support competence in the profession by facilitating review and reflection on services already provided, in order to learn from this experience.

Some of these ex-post tools are targeted on generic standards across the legal profession, some on law firms or organisations providing legal services and others on individual practitioners.

A non-exhaustive list of such tools includes:

i) Assurance visits and audits

Regular inspections of a proportion of law firms are carried out in a number of jurisdictions. These are often very narrowly connected to financial compliance (e.g., the Law Society of Scotland's financial compliance inspections⁵³) but can also apply to firms that have particular accreditations (e.g., to legal aid panels).

In the case of the Victoria Legal Aid (VLA) panel of law firms, panel members are selected at random for audit. Audits are carried out on an annual cycle, focusing each year on practitioners belonging to a particular practice panel (e.g., civil justice, family law etc). VLA auditors select practitioners for audit following a risk-based quality audit methodology, based on their file load, experience and past performance. If the audit identifies significant issues, a practitioner will be required to undertake a Quality Improvement Plan (QIP)⁵⁴. A QIP will involve active engagement between VLA auditors and the panel member. This might include the following activities:

- Identification of specific instances of non-adherence with practice standards, and feedback on how practitioners might improve their practice.
- Provision of VLA resources such as guidance and checklists
- Recommendations for further legal education.

⁵³ <https://www.lawscot.org.uk/members/business-support/financial-compliance/inspections/>

⁵⁴ <https://www.legalaid.vic.gov.au/information-for-lawyers/practitioner-panels/panels-conditions/quality-assurance-helping-our-clients-and-panel-practitioners>

The VLA annual report for 2019-20⁵⁵ indicated that audits were most likely to identify room for improvement in the following areas: Supervision of work done by others on matters, conflict awareness and organisation of files.

ii) *Liability Management*

Insurance and other forms of liability management can be used to encourage wider adoption of competent behaviours in legal sector organisations. The Law Society of New South Wales, for example, runs a Practice Standards Scheme, which is a public and employment liability scheme which reduces practice exposure to claims and complaints. In order to join this scheme participants are expected to demonstrate their commitment to high professional standards by implementing appropriate policies and processes within their law practices, identifying their risks in providing legal services and implementing strategies to mitigate those risks. One claim of the scheme is that it helps to ensure compliance with Legal Profession legislation.

iii) *Thematic Reviews*

Some regulators carry out periodic policy or thematic reviews, or surveys of certain areas of their activity which may then trigger a requirement for profession wide education as a result. The Dutch regulatory system identifies thematic supervision as one of the range of tools at the disposal of the Deans of its local Bars⁵⁶, alongside proactive supervision, reactive supervision, and risk-based supervision.

A good example of how thematic supervision can contribute to broader thinking about competence issues was the 2019 survey of articling which was undertaken by the Law Society of Alberta and which revealed that 32% of new lawyers claimed that they had experienced discrimination and/or harassment during recruitment or articling. This has then prompted a proposed requirement for mandatory anti-discrimination training across the profession.

iv) *Peer Review*

Whilst elements of peer review are occasionally used in some jurisdictions (e.g., in the form of references from judges and fellow practitioners as a prerequisite for registration on a specialist accreditation scheme) they are not in widespread use as a tool in their own right.

An exception to this is a new scheme that has been established in the Netherlands. Following a change in the law in 2017⁵⁷, from March 2020 all Dutch lawyers are required to register their areas of practice with their local Bar (up to four areas permitted). They must then undertake 10 hours of CPD for each area of their registered specialist practice and must record at least 20 hours a year.

They are also required to take part in some form of peer review every year. The lawyer can choose between three types of peer review:

⁵⁵ <https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-annual-report-2019-2020.pdf>

⁵⁶ The deans or “deken” are responsible under Dutch legislation for the supervision and discipline of the legal profession.

⁵⁷ For various versions of the Netherlands Lawyers’ law (Advocatenwet) see <https://regelgeving.advocatenorde.nl/content/advocatenwet>

- Expert peer review – in which a designated expert reviews at least five files for review and discussion (at least 4 hours per year).
- Intervention – in which a group of lawyers discuss ethical dilemmas in a periodic conversation led by an expert moderator (at least 8 hours per year).
- Structured Peer Consultation – in which a group of lawyers led by and expert moderator discuss issues of professionalism (at least 8 hours per year).

v) Revalidation

There are very few examples of genuine revalidation in the legal profession – when a practitioner’s ability to continue to practice is called into question by a routine re-evaluation of their competence. The most developed scheme appears to be the Quality Assurance Scheme run by the Scottish Faculty of Advocates⁵⁸.

Since 2016, the Faculty has annually assessed about 20% of the practising bar, starting with the most senior advocates. The assessment takes the form of an oral advocacy exercise selected according to the advocate’s practice area. Video recorded presentations are assessed by a group of trained senior advocates. If the advocate is deemed to have failed that presentation they are required to take a second assessment using a different exercise and in front of a different assessor. And between the two assessments, the advocate is offered feedback and assistance. If the second assessment still fails to meet the required standard, the advocate is suspended pending full Devil’s⁵⁹ assessment the following year, prior to recommencing practice. In 2018, for example, 2 advocates, out of 84, failed the first assessment but following further training passed the second assessment.

On the face of it, this scheme has been effective in engaging the profession wholesale in refreshing and upgrading its skills and has focused most attention on those in most need of improvement. The Faculty reports in the statement on the scheme on its website, for example, that:

“In 2019, 77 members of Faculty were assessed. In advance of the programme a number of workshops were held to assist with re-enforcement and development of advocacy skills. These workshops were well attended by members so that, most if not all, participants received several hours of additional advocacy skills training in advance of their assessment”⁶⁰.

This scheme will be coming up for its first five-year review in 2021 and it will be interesting to see what the evaluation concludes from what appears to be promising early results. It must be said however, that the scheme benefits from the fact that the skills being tested are delivered in a single context and for relatively small numbers, so caution would need to be exercised in determining whether a similar scheme would work in a larger context.

vi) Early Intervention

Another tool used by Alberta is the “Resolution and Early Intervention (EI) Process” which is triggered when a complaint about a lawyer’s conduct is not going to trigger a sanction but is deemed worthy of some form of intervention. During a review of a

⁵⁸ <http://www.advocates.org.uk/media/3211/annual-qa-statement-2019.pdf>

⁵⁹ Devil is the term used by the Faculty of Advocates to describe trainee advocates – see [Becoming an Advocate](#)

⁶⁰ <http://www.advocates.org.uk/media/3876/annual-qa-statement-2019-20.pdf>

complaint, the Law Society's Early Intervention Counsel consider whether the lawyer could have improved their service or practice in order to avoid the complaint. Even if the complaint is dismissed, Early Intervention Counsel may continue to work with the lawyer to provide education, guidance and recommendations for practice and service improvements. Education and advice given to lawyers under this approach are not considered to be sanctions and do not form part of the lawyer's disciplinary history.

vii) Remediation

Remediation⁶¹ is a similar type of scheme but is a more formal part of the disciplinary system. It is designed to improve on the outcomes of a purely sanctions based approach by encouraging self-reflection and peer review. These kinds of scheme are attracting increasing attention and have been deployed, apparently successfully, in a number of provinces in Canada.

In British Columbia, for example, the disciplinary process will involve a meeting held between the lawyer subject to a complaint and one or more of the Benchers (Board of the Law Society) in order to discuss the conduct of the lawyer. Meetings are held in private and will not form part of a lawyer's professional conduct record. The purpose of the conduct meeting is to educate the lawyer about the conduct that has resulted in the complaint and to ensure the lawyer has a greater understanding of the consequences of his or her actions.

A more serious complaint will trigger a conduct review. This will involve a meeting between at least one Law Society Benchers and one other senior lawyer to discuss the conduct that led to the complaint. The purpose is to make sure the lawyer understands the problems created by his or her conduct and to satisfy the review committee that the lawyer is unlikely to repeat the behaviour. A conduct review is not a formal hearing, and it is conducted privately, although the person who filed the complaint is invited to attend part of the review. Unlike a conduct meeting, the review becomes part of the lawyer's record and may be considered if any future discipline violations are proved against the lawyer.

In a similar vein, the Nova Scotia Barristers Society has launched a "Fitness to Practice Program" which is specifically designed to deal with the competence issues around mental health and addiction. This programme allows for an alternative to the usual complaints process to be pursued in appropriate cases. Lawyers can self-refer to this programme and the result is an agreement between the lawyer and the Society that is intended both to protect the public and assist in addressing the lawyer's incapacity.

viii) Rehabilitative Sanctions

Where formal sanctions are actually imposed (as opposed to one of the alternative processes outlined above), most jurisdictions have only a limited range of possibilities. There are a surprisingly few jurisdictions which have some form of sanction in their armoury that falls short of a suspension or striking-off, but which involves more than a warning or a fine.

⁶¹ Remediation is a regulatory concept imported from other industries and sectors. It has been widely used in recent years in the financial services sector as a pre-enforcement mechanism for addressing compensation for past practices which have been ruled as unfair by the regulator (e.g., compensation for mis-selling of payment protection etc). The emphasis on such schemes is on meaningful redress for the customer as well as correcting internal practices for the future.

In New South Wales in Australia, the Legal Services Commissioner can order a solicitor or barrister to undertake a course of further legal education as a disciplinary sanction. And in Victoria, the VLSB&C can place a lawyer under supervision. Whilst many European jurisdictions allow for temporary⁶² or partial suspensions⁶³, Austria appears to be the only jurisdiction within the EU that allows for the possibility of a lawyer being put under supervision.

How these all fit ideas together

One area which is, as yet, missing from the range of ongoing competence assurance tools used, is a fully fleshed out competency framework.

Most jurisdictions are still setting out requirements for lawyers which are qualitative (e.g. hours based CPD systems) or process based (e.g. self-assessment) but with little, if any, reference to any defined framework for lawyer competence.

Competency Frameworks

In most countries admission as a lawyer is based on three elements: An academic component, a practice component and a character component⁶⁴. These are most commonly set out in terms such as: "Possession of a postgraduate degree in law, passing the bar exam and undertaking two years of work experience under the supervision of a qualified lawyer". There is rarely any explanation of how these requirements relate to the way in which newly admitted lawyers should behave, the knowledge and attributes they should possess and be able to deploy, and the skills they should be able to demonstrate.

This is important because if we do not know what competencies are expected in a new lawyer, how will we know what to expect in a more established lawyer?

This is being addressed in a number of countries, as regulators think about the "new lawyer" competence framework and begin to put it in place.

In the US, for example, IAALS has been undertaking extensive research into new lawyer competencies (see "Building a Better Bar") and having identified 77 foundations for practice is working with the profession and law schools in order to get these competencies reflected in the law school curriculum. And the US National Conference of Bar Examiners (NCBE) has been undertaking a three-year, multi-phase study to "*identify core competencies for newly licensed lawyers and explore when and how those competencies should be assessed*"⁶⁵.

The existence of increasing numbers of definitions of new lawyer competence throw into sharp relief the lack of any development of these competences beyond their initial threshold levels. But this is something which those regulators thinking most deeply about ongoing competence have identified as an area for action:

⁶² E.g. In Greece temporary suspensions can be between 8 days to 6 months, in Poland between 3 months and 5 years and in the Czech republic between 6 months and 5 years.

⁶³ Suspension from specific areas of practice is possible in Denmark, Finland and Germany

⁶⁴ IBA Global Cross Border Legal Services database, 2014

⁶⁵ <https://www.ncbex.org/news/the-national-conference-of-bar-examiners-appoints-a-testing-task-force/>

For example, in its CPD Issues report, the VLSBC stated

“If mandatory CPD is justified by the need to maintain professional competence, a framework would provide the means by which competence could be defined and CPD was organised to support it.”

In Alberta, the recent review of competence has not only prompted work on a new lawyer competence framework but has also stimulated a review of the 6 core lawyer competences that are intended to guide the profession in its thinking about this topic. The Law Society has recognised that it needs to relate its statement of core competence much more directly to potential learning outcomes and so has taken on the challenge to develop a basis for more detailed core competencies in future, by undertaking detailed thinking on these questions:

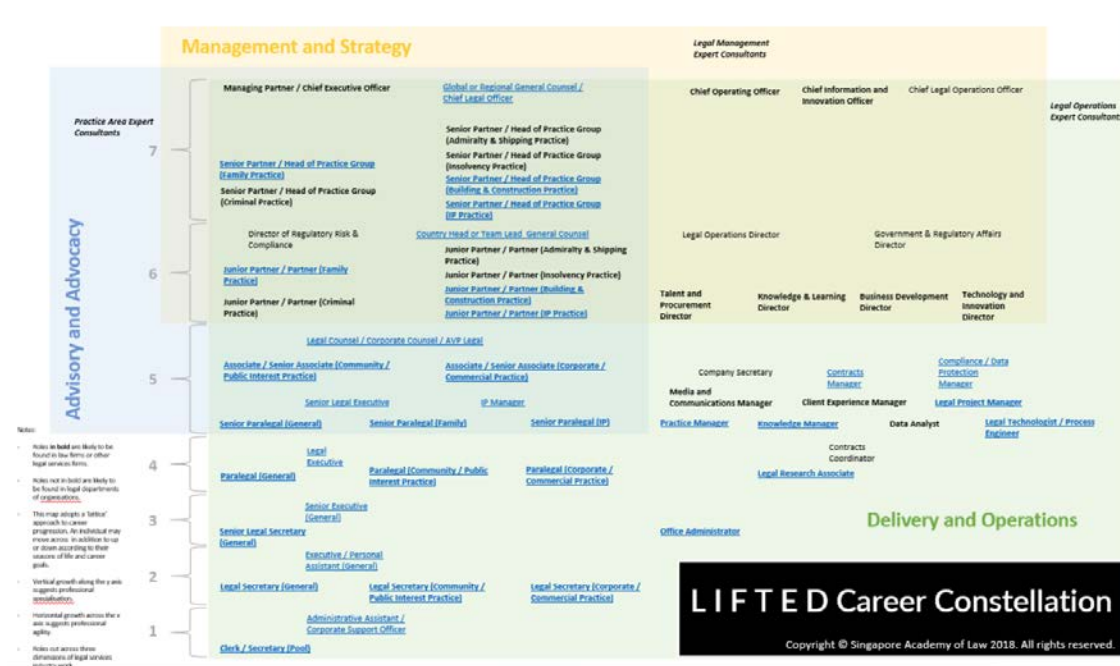
- What does a lawyer proficient in client relationships do, and not do?
- What does a culturally proficient lawyer do, and not do?
- What does a lawyer proficient in law business management do, and not do?
- What does an ethically proficient lawyer do, and not do?
- What does a substantively proficient lawyer do, and not do?
- What does a healthy and well lawyer do, and not do?

Beyond the work being undertaken in these pioneer jurisdictions, there is perhaps an opportunity to go further and consider defining competency frameworks for key roles that regulators are also interested in – such as law firm managers or compliance partners – not necessarily in order to set threshold or regulatory requirements for these roles but in order to set a benchmark of the expectations relating to such roles. The Singapore Academy of Law (SAL) has begun this exercise through an initiative entitled the Legal Industry Framework for Training and Education (LIFTED).

LIFTED has mapped competencies for legal professionals and associate professionals to create clearer professional development pathways and learning journeys, as a mechanism for helping legal professionals decide on their own professional development activities. This mapping, or ‘career constellation’ is shown below in figure 5⁶⁶.

Figure 5: Career Constellation Mapping, Singapore Academy of Law

⁶⁶ A full-sized version of this diagram is attached at Annex C



SAL has developed competence frameworks for most of the job roles shown in the legal industry career constellation. It also offers through a LIFTED webapp⁶⁷, a learning needs diagnostic⁶⁸ for legal industry professionals which links directly to recommendations for courses and other learning resources.

In addition to the guidance they provide to practitioners, there may be other uses for competence frameworks.

How could ongoing competence assurance help consumers?

⁶⁷ <https://app.lifted.sg/browse/>

⁶⁸ <https://app.lifted.sg/analysis>

In order to address the question of how competence assurance is being used, or could be used, to help clients choose legal service providers, we first need to understand what clients regard as positive factors when making their choices. A recent project undertaken by the Institute for the Advancement of the American Legal System, is an excellent place to start in this investigation.

Box 4: IAALS “Think Like a Client” Project

In 2019 the Institute for the Advancement of the American Legal System (IAALS) based at the University of Denver, undertook a major project examining what clients value in legal service providers. This project assessed the factors that clients using the services of the online US lawyer marketplace Avvo.com were suggesting that they had valued most in the lawyers they had used in the reviews they had posted.

The objective was to understand what clients think is important in a lawyer, using quantitative as well as qualitative analysis. IAALS used a decade’s worth of consumer reviews of lawyers, posted between 2007 and 2017, around 700,000 reviews in total. These were assessed and selected for qualitative analysis based on whether or not they contained some comment on why a client was, or was not, satisfied with their attorney and were reviews posted by the clients themselves.

This resulted in a dataset of 2,232 client reviews which were coded and assessed on the basis of the factors identified in an earlier IAALS project on lawyer skills, behaviours, and competencies.

The project identified the key attributes that consumers want from their lawyers:

- Effective communication
- The right behavioural attributes integrity, ethics, kindness, courtesy etc
- The lawyer is able to produce the best possible outcome for their case.
- An effective lawyer able to demonstrate and apply legal knowledge and expertise.
- Persistence and diligence

The results of this project will now feed back into work IAALS is doing with law schools and law firms to work on developing this thinking into new lawyer competences.

IAALS’ ‘Think like a client’ project provides a more comprehensive and scientific overlay to existing surveys of consumer views and the beginnings of a definition of what ‘quality’ means to clients in a legal service context. Although there may be some jurisdictional differences that need to be considered, it is still a very helpful starting point and could be further analysed to see if competence assurance can help to clarify one or more of the quality indicators at play when a consumer is choosing their legal service provider.

Quality indicators could have a wider use in promoting industry transformation. In a 2015 article “*Getting to new law: standardized quality metrics*”, Dr Ron Dolin, a Senior Research Fellow at Harvard Law’s Center on the Legal Profession, argues that industry-wide quality benchmarks are essential if we are to be able to help clients choose legal services more effectively:

“For example, what might we expect in a high-quality estate plan?”

Are there common elements in an IP license agreement that we could use to measure quality — say checking for common phrases that have shown to be problematic in case law?”⁶⁹

He further argues that quality metrics could also play a role in removing barriers to the adoption of technology in the legal sector.

“Only by applying quantitative techniques, machine learning, and empirical analysis to the development of standardized quality metrics, can we unlock the efficiency gains in law that technology has provided in other industries while maintaining or improving the quality required for removing existing barriers to adoption”.⁷⁰

This call for a more quantitative focus on measuring legal services has been taken up more recently by Dan Linna of NorthWestern University who argues in a forthcoming book⁷¹ for the introduction of a quality movement into the law. He proposes that this should focus on establishing standard processes for approaching legal work, encourage a culture of error detection and elimination by adopting the mindset of continuous improvement, embed peer review as a matter of course, and seek to introduce performance measurement for quality and value.

In a chapter entitled “Evaluating Legal Services: The Need for a Quality Movement and Standard Measures of Quality and Value”, Linna argues that:

“the lack of a culture of quality and standard metrics and methods for evaluating legal services and legal systems is a significant obstacle to serious progress. When we cannot effectively evaluate the status quo, it is extremely difficult to evaluate the impact of introducing technology into legal services and systems.”

Competence assurance systems that contribute to this culture of quality and standard metrics will therefore also help to play a part in creating an environment supportive of the greater rollout of legal technology.

Getting to statements of measurable quality benchmarks are not new and the standardisation of legal processes have long been seen as a starting point for quality improvement.

As far back as 1981, Nancy A. Strehlow⁷² advocated that the American Bar Association (ABA) should adopt a new and more detailed statement of lawyer competence, as shown in box 5.

Although this is more general than the sort of metric set out by Dolin, it does reflect the same inspiration: There is a process beneath every legal service and the better equipped a client is to understand the process a lawyer should be going through in order to deliver the service they need competently, the easier it will be for clients to select their lawyers and judge the quality of what they are doing for them.

Strehlow was unfortunately not successful in promoting the adoption of a more process driven approach to competence, as the current ABA rule on competence illustrates:

“ABA Model Rule 1: Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation”.

⁶⁹ Dolin, 2017

⁷⁰ Dolin, 2015

⁷¹ Linna (2021)

⁷² Strehlow (1981)

Box 5: A Proposed Restatement of Competence for the ABA

- (1) At a minimum, a lawyer shall serve a client with skill and care commensurate with that afforded by reasonable attorneys in similar matters.
- (2) A lawyer shall seek out all facts, legal authorities, and resources that are reasonably available and relevant to a client's interests in the matter entrusted to the lawyer by the client.
- (3) A lawyer shall keep a client informed about matters in which the lawyer's services are being rendered. Informing the client includes: (a) periodically advising the client of the status and progress of the matter; (b) explaining the significant legal and practical aspects of the matter and the foreseeable effects of alternative courses of action; and (c) promptly complying with reasonable requests for information about the matter.
- (4) A lawyer shall give due regard not only to established legal principles and rules, but also to legal concepts that are developing and that might affect a client's interests.
- (5) A lawyer shall formulate the material legal and factual issues and identify alternative legal responses to the problem.
- (6) A lawyer shall take such legal action as is necessary and reasonably available to protect a client's interests.

The world has moved on considerably since the early 1980s and the arrival of process management into the law, coupled with the stimulus of legal technology, suggests that there may well be a role for ongoing competence assurance to play in furthering the quality debate. Annex D, for example, summarises the IAALS quality indicators and suggests how legal regulators might take them into account in their work on ongoing competence.

The extensive list of ongoing assurance tools and related instruments covered in this section, indicates that there is plenty of effort being put into the issue of lawyer competency. But many of these initiatives will find it difficult to demonstrate that they have any significant impact on competence because:

- They are often applied without reference to the underlying purpose inherent in any measure. As a result, regulators can sometimes convince themselves that they are helping consumers by applying a tool of competence assurance such as a specialisation scheme. But a closer of analysis of such schemes shows that these may be of more benefit to lawyers as a marketing tool and any benefits to consumers (e.g., more up to date lawyers) may come at a cost in terms of higher fees and unnecessary barriers to competition.
- Few, if any, jurisdictions demonstrate any overarching approach to competence, either in the form a competence model which seeks to link individual measures across the work of the regulatory body or a definition of competence which goes beyond that required of new entrants. The NOvA (Netherlands Bar), Law Society of Alberta and the Victorian Legal Services Board and Commissioner, seem furthest advanced in their thinking in this area.

- Last but by no means least, it is difficult to judge the merits of any of the approaches outlined above as few have any performance metrics attached to them and there has been no quantitative assessment yet of whether they have yielded worthwhile results.

Conclusions

This report has argued that any assessment of ongoing competence assurance schemes has to bear in mind the different interests at play. Whilst the public interest and enhancing consumer choice should be driving ongoing competence assurance, experience suggests that the interests of the profession in maintaining the collective reputation of its members (i.e., acting as a type of 'trade union') and the competitive marketing interest of individual lawyers are also influencing how schemes in practice are designed and implemented. This in turn determines how effective they are at achieving their public or consumer interest goals.

Regulatory assurance clearly has a role to play in ensuring that schemes are defined for maximum effectiveness but what is its appropriate role? How does a regulatory scheme ensure that it does not end up crowding out the lawyer's responsibility for their own learning and development by setting a minimum hours CPD requirement that displaces any individual engagement by the lawyer in what they need? How does competence assurance ensure that it does not simply add cost into the system?

Evidence from published surveys, articles, and other public statements from individual lawyers in different jurisdictions appears to confirm that many practising lawyers do not understand the distinction between the public interest driver for CPD and their own personal interest. To a large extent this is not surprising, since CPD schemes have become complex in many jurisdictions without any accompanying efforts to explain how the regulator's requirements may add to, not replace, other learning and development motivations.

This suggests that there is more that needs to be done across the board:

- To embed a stronger lifelong learning culture from qualification onwards.
- to provide greater guidance and training on how to undertake self-reflection.
- and
- to mark out the difference between learning that the regulator needs to get the lawyer to do in order to fulfil some public interest purpose and learning that lawyers should be responsible for themselves.

There may also be tools that regulators could develop and promote to help achieve these objectives. For example, there is scope to explain more clearly to lawyers how initial competences might be expected to develop during a lawyer's career. This would help those engaged in self-assessment to think more about whether they are displaying the attitudes and behaviours that would be expected of a professional as they progress in their expertise. Such competence statements could be expressed in terms that would be independent of practice area or size of practice and be voluntary so that they nudge behaviour, rather than attempt to be prescriptive.

There is also reason to believe that the development of competence statements in relation to more specific tasks, could help to support the development and measurement of quality indicators, and even provide a basis to support the greater take up of legal technology.

Reflections for Legal Regulators in England and Wales

These observations translate into a number of points for legal regulators in England and Wales to reflect on:

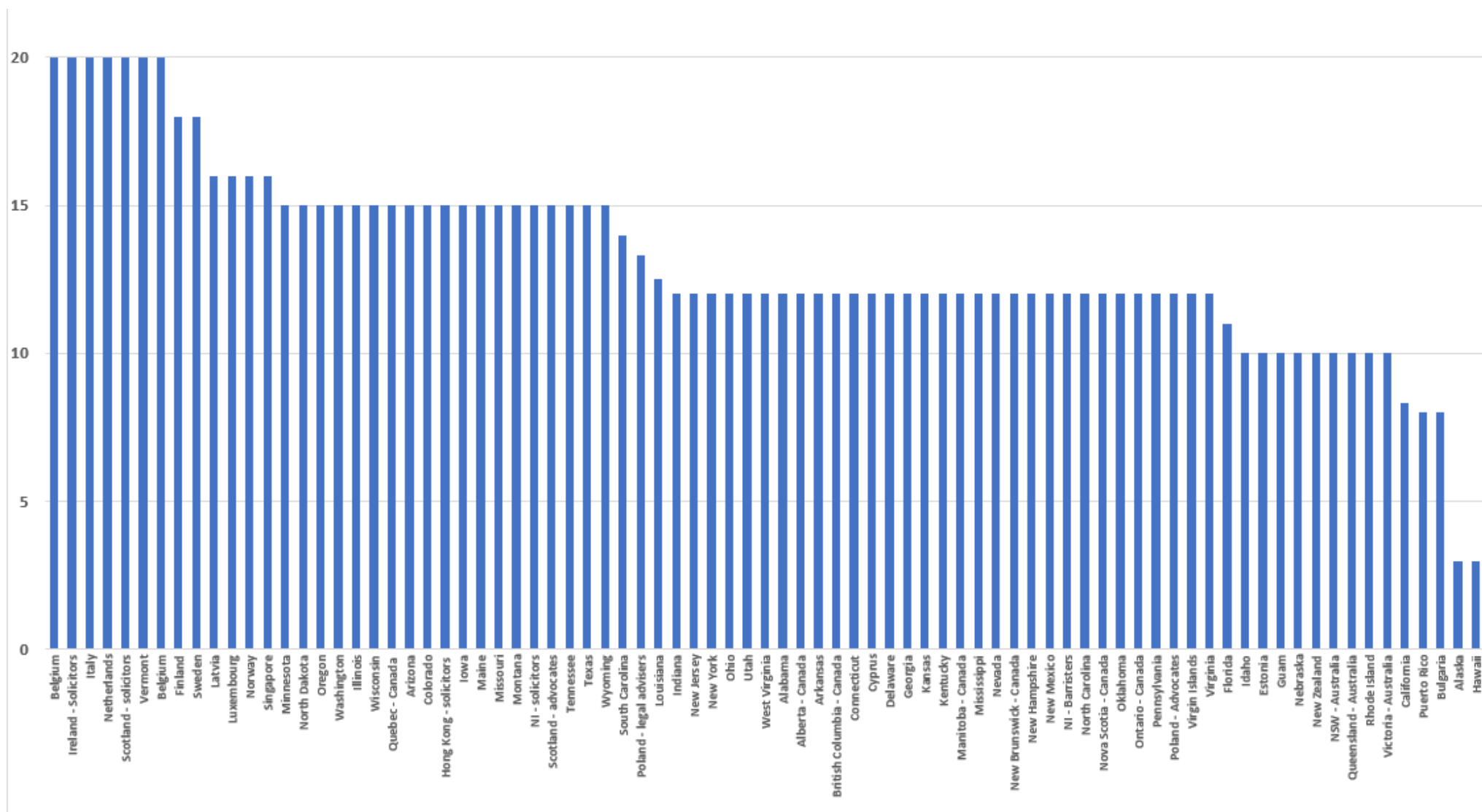
- i). Firstly, the direction of travel of ongoing competence schemes suggests that it will be increasingly important to ensure that threshold competence requirements include some reference to the need for practitioners to develop an appreciation of life-long learning and the skill of self-assessment.
- ii). It may be worth reflecting on the cautionary tales from other jurisdictions and the need for new entrants to the legal profession to have a full appreciation of “professional/public interest” values. Centralised assessments can only go so far in encouraging aspiring lawyers to embrace these values and so it may be worth looking at other tools, such as the kind of online learning that the California Bar requires all of its new entrants to complete in their first year of admission or mentoring arrangements to support new lawyers who are qualifying without the backup of a permanent employer.
- iii). Although CPD, in some form or other, is likely to remain at the heart of any ongoing competence scheme, it should not be expected to act as the sole guarantor of a practitioner's continuing competence. Other tools, such as guidance or training on how to approach self-reflection, or on how to mentor and support others, are also important.
- iv). The development of a career stage competence framework could help those engaged in self-reflective CPD to diagnose their own needs more accurately. For example, lawyers approaching retirement might be encouraged to think about the various development needs, personal and professional, they might have in relation to this stage of their careers. There may be other types of self-assessment skills and techniques, as well as tools, that can be adopted from other jurisdictions, such as those currently being trialled in the Netherlands.
- v). More detailed competence frameworks could be developed for those undertaking specific roles e.g., legal practice managers, those supervising trainees etc. These would not necessarily have to be compliance standards but could provide useful guidance to the profession on generic expectations to which they can compare themselves.
- vi). It might be helpful for regulators to publish clearer ongoing competence schemes to set out expectations around lifelong learning and development. These could also distinguish what a lawyer should do for themselves and their own practice (and as part of their duty to keep up to date or competent in what they do) from any additional learning or courses which might be recommended or mandated by regulators to the profession in part or in its entirety.
- vii). Attention should be paid throughout to the cost-benefit ratio of any measures taken. In too many jurisdictions, the introduction of more regulatory measures and additional requirements and hours are seen as somehow “better”. Caution should also be used in extrapolating from the experience of other jurisdictions. The Faculty of Advocates Quality Assurance Scheme may be very positive in its specific circumstances but could be difficult and expensive to roll out in a wider context.
- viii). Last but by no means least, regulators could better connect CPD schemes and other ongoing assurance tools of a similar nature to their other in-practice regulatory efforts. This could involve, for example, learning from jurisdictions like British Columbia, where a complaints process may end more appropriately as a learning experience rather than in sanction.

Overall, whilst no other regulator in any other jurisdiction would claim to have developed a perfect model for regulating lawyers in-practice, there are signs that some are, at least, beginning to give this stage of the lawyer life-cycle the attention it deserves. The key, however, is focusing on actions that increase transparency and perceptions of 'good' market behaviour, to overcome the information asymmetries that exist, not just between consumers and legal professionals but between legal professionals themselves.

Annex A: Summary of Jurisdictional Approaches to Ongoing Competence

- i) Annual Average Hours of Mandatory Minimum Lawyer CPD Required around the World
- ii) Detail on Certain Jurisdictions

i) Annual Average Hours of Mandatory Minimum Lawyer CPD Required around the World



Nb. In certain jurisdictions shown, CPD requirements have been averaged across a multi-year requirement (see listing below) or translated from points requirements into hours. This translation has been done simply though it should be acknowledged that not every point for every activity in every jurisdiction requires the same input of time (e.g., 1 point of time can be earned in Singapore for every 20 minutes of law teaching)

Minimum Required CPD/CLE per year (unless otherwise specified)

Minnesota	45 hours over 3 years	Singapore	16	New Brunswick - Canada	12
North Dakota	45 hours over 3 years	Arizona	15	New Hampshire	12
Oregon	45 hours over 3 years	Colorado	15	New Mexico	12
Washington	45 hours over 3 years	Hong Kong - solicitors	15	NI - Barristers	12
Indiana	36 hours over 3 years	Iowa	15	North Carolina	12
Illinois	30 years over 2 years	Maine	15	Nova Scotia - Canada	12
Wisconsin	30 years over 2 years	Missouri	15	Oklahoma	12
Idaho	30 hours over 3 years	Montana	15	Ontario - Canada	12
Quebec - Canada	30 hours over 2 years	NI - solicitors	15	Pennsylvania	12
California	25 hours over 3 years	Scotland - advocates	15	Poland - Advocates	12
Puerto Rico	24 hours over 3 years	Tennessee	15	Virgin Islands	12
New Jersey	24 hours over 2 years	Texas	15	Virginia	12
New York	24 hours over 2 years	Wyoming	15	Florida	11
Ohio	24 hours over 2 years	South Carolina	14	Estonia	10
Utah	24 hours over 2 years	Poland - legal advisers	40 points over 3 years	Guam	10
West Virginia	24 hours over 2 years	Louisiana	12.5	Nebraska	10
Belgium	60 points over 3 years	Alabama	12	New Zealand	10
Ireland	20	Alberta - Canada	12	NSW - Australia	10
Ireland - Solicitors	20	Arkansas	12	Queensland - Australia	10
Italy	60 points over 3 years	British Columbia - Canada	12	Rhode Island	10
France	40 hours over 2 years	Connecticut	12	Victoria - Australia	10
Netherlands	20	Cyprus	12	Bulgaria	8
Scotland - solicitors	20	Delaware	12	Alaska	3
Vermont	20	Georgia	12	Hawaii	3
Finland	18	Kansas	12	DC	Not required
Sweden	18	Kentucky	12	Maryland	Not required
Latvia	16	Manitoba - Canada	12	Massachusetts	Not required
Luxembourg	16	Mississippi	12	Michigan	Not required
Norway	16	Nevada	12	South Dakota	Not required

ii) More Detail on Certain Jurisdictions

The selection of ongoing competence requirements outlined below is intended only as a brief overview of some of the jurisdictions that are undertaking CPD schemes, or other forms of ongoing competence assurance, that are interesting for one reason or another. It is not intended to be exhaustive either in the picture it presents of the individual jurisdiction or to suggest that there is not interesting and useful work being undertaken in other jurisdictions not mentioned.

Jurisdiction	CPD Requirements	Other Regulatory Tools for Competence Assurance
Australia – New South Wales	<p>NSW solicitors are required to complete 10 CPD units each year. Within these at least 1 CPD unit must be completed every year in each of the following compulsory fields:</p> <ol style="list-style-type: none"> 1. Ethics and professional responsibility 2. Practice management and business skills 3. Professional skills 4. Substantive law <p>CPD is self-certified. The Law Society verifies compliance with the CPD scheme by a random audit of solicitors each year – conducted initially by email with follow-up, as necessary.</p> <p>Under the Uniform Law (shared with Victoria) failure to comply can lead to disciplinary action and/or civil penalties.</p>	<p>Specialist certifications available in: Advocacy, Business Law, Children’s Law, Commercial Litigation, Criminal Law, Dispute Resolution, Employment and Industrial, Family Law, Government and Administrative Law, Immigration Law, Local Government and Planning Law, Mediation, Personal Injury, Planning and Environment, Property Law, Taxation Law, Wills and Estates.</p> <p>NSW specialist certifications specify what knowledge and skills specialist expected to demonstrate. Test carried out by written examination and practical file examination or simulated interview.</p> <p>Renewal of certification possible on declaration that 10 hours of CPD have been undertaken in each area of specialism.</p>
Australia - Victoria	<p>10 mandatory CPD points annually.</p> <p>Minimum 1 point in: Ethics and professional responsibility, practice management and business skills, substantive law (or substantive law, practice and procedure, and evidence for barristers), professional skills (or barristers’ skills for barristers).</p> <p>Points may be obtained in a variety of different ways, including through attendance at committees. Lawyers over 40 years’ experience may be exempted. Attendance record and evidence must be kept. Compliance is a condition of PC renewal and annual self- certification required on practising certificate renewal.</p>	<p>Subject to random audit. Non-compliance under section 15 of the Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015 may trigger a written instruction from the VLSB&C to comply and submit a plan on how compliance will be achieved.</p> <p>CPD also relevant in other disciplinary/licensing issues e.g., a history of CPD non-compliance would be a factor in suitability decisions. CPD requirements may be considered as part of a disciplinary response (e.g., VLSB&C may require lawyer to undertake additional CPD and VCAT often includes learning and development orders that involve additional hours of ethics focused CPD in the disciplinary matters that it adjudicates).</p> <p>See annex B for details on current review.</p>

Jurisdiction	CPD Requirements	Other Regulatory Tools for Competence Assurance
Austria	Austrian lawyers are obliged to undertake CPD every year but the number of hours left to the lawyer. Section 1299f of the Austrian Civil Code stipulates that lawyers who do not take into account the latest developments in law may be held liable (professional indemnity), which is intended to act as sufficient incentive.	One possible sanction for disciplinary offences, is a requirement for the lawyer may be put under supervision and have his/her right to appear before certain courts and authorities withdrawn. They may also be prohibited from providing vocational training to future lawyers.
Belgium	<p>French Speaking Order: 20 points of CPD are required a year, which can be obtained through on-line training, conferences and forms of legal work that require specific additional training. Conferences organised by the Bar do not need to be supported by evidence but other forms of CPD obtained must be justified to the Bar to claim points.</p> <p>Two-thirds of points must be obtained by study of the law, the remainder can be obtained in other areas e.g., management, etc.</p> <p>Non-compliance with CPD obligations is a disciplinary breach which is punished at the discretion of the batonnier.</p>	The Belgian Bars are both considering the introduction of voluntary specialism schemes which would be underpinned by closer regulatory scrutiny.
California	<p>Attorneys must complete 25 hours of CLE over 3 years. Minimum 4 hours in Ethics, 1 hour in Competence, 1 hour in Recognition and Elimination of Bias. Maximum of 12.5 hours self-study. CLE Providers must be accredited.</p> <p>Statement of compliance required triennially. Records are not tracked but may be subject to audit. Failure to comply may lead to suspension of right to practise.</p>	<p>The State Bar of California also administers certifications of specialisation in certain areas of the law. In order to be eligible for a specialist qualification, an attorney must have practiced law continuously for at least five years, spent at least 25 percent of their work practising in the specialty area. Have exceeded the general CLE requirement in the specialty area and be able to demonstrate broad based expertise based on documented matters and favourable evaluations by other attorneys and judges familiar with the attorney's work in the specialty area of law.</p> <p>Specialists must complete 36 hours of Legal Specialist CLE every three years in addition to ordinary CLE requirements.</p> <p>Specialisation does not affect rights to practice (California Rules of Conduct 9.35)</p> <p><i>"No attorney may be required to obtain certification as a certified specialist as a prerequisite to practicing law in this state. Any attorney, alone or in association with any other attorney, has the right to practice in any field of law in this state and to act as counsel in every type of case, even though he or she is not certified as a specialist."</i></p>

Jurisdiction	CPD Requirements	Other Regulatory Tools for Competence Assurance
Canada – Alberta	<p>Alberta is the only Canadian province that does not require lawyers to complete a minimum number of CPD activity. Rather, lawyers are annually required to assess their learning needs, identify learning outcomes for the year ahead, and develop and carry out a learning plan to achieve these outcomes. It remains the responsibility of every Alberta lawyer to maintain their own competence and self-assess areas for improvement.</p> <p>The Law Society Code of Conduct, Chapter 3, imposes an ethical responsibility on lawyers to be competent in all legal services undertaken on a client's behalf.</p> <p>The Rules of the Law Society of Alberta, define CPD as:</p> <p>67.1 (1) "Continuing professional development" is any learning activity that is:</p> <ul style="list-style-type: none"> (a) relevant to the professional needs of a lawyer; (b) pertinent to long-term career interests as a lawyer; (c) in the interests of the employer of a lawyer or (d) related to the professional ethics and responsibilities of lawyers. <p>(2) Continuing professional development must contain significant substantive, technical, practical, or intellectual content.</p> <p>(3) It is each lawyer's responsibility to determine whether a learning activity meets these criteria and therefore qualifies as continuing professional development.</p>	<p>New requirements will come online in 2021 when a new competency framework is implemented.</p> <p>This will include competencies related to a lawyer's entire career that are proportionate, effective, and dynamic, and incorporate wellness as a key component. There will also be an Indigenous cultural competency program for all Alberta lawyers to meaningfully address the Law Society's obligation arising from the Truth & Reconciliation Committee's calls to action. This program will not be one-size-fits-all and will respect the backgrounds and practice environments of Alberta lawyers.</p>
Canada - British Columbia	<p>In each calendar year, lawyers must complete at least 12 hours of CPD in accredited educational activities. At least 2 of the 12 hours must pertain to any combination of professional responsibility and ethics, client care and relations, or practice management.</p>	<p>Following investigation into a complaint, if there are competency concerns, the lawyer may be referred to the Practice Standards Committee for remedial measure to improve his or her practice.</p> <p>If a matter is referred to the Disciplinary committee, the following actions related to competency may be taken:</p> <ul style="list-style-type: none"> • The committee chair may write the lawyer a letter expressing the committee's concerns and reminding the lawyer of his or her professional obligations. A copy or summary is sent to the complainant. This does not form part of a lawyer's professional conduct record and is not admissible in the hearing of any future citation.

Jurisdiction	CPD Requirements	Other Regulatory Tools for Competence Assurance
		<ul style="list-style-type: none"> • A conduct meeting may be held between the lawyer and one or more Benchers or lawyers to discuss the conduct of the lawyer and its results do not form part of a lawyer's conduct record. The purpose of the meeting is to educate the lawyer about the conduct that has resulted in the complaint and to ensure the lawyer has a greater understanding of the consequences of his or her actions. • A conduct review is a meeting between at least one Law Society Bencher and one other senior lawyer to discuss the conduct that led to the complaint. The purpose is to make sure the lawyer understands the problems created by the conduct and to satisfy the review committee that the lawyer is unlikely to repeat the behaviour. A conduct review is not a formal hearing, and it is conducted privately. The person who filed the complaint is invited to attend part of the review. The review becomes part of the lawyer's record and may be considered if any future discipline violations are proved against the lawyer.
Canada – Nova Scotia	The Nova Scotia Barristers Society requires lawyers to	

Jurisdiction	CPD Requirements	Other Regulatory Tools for Competence Assurance
Finland	A Finnish lawyer is required to complete 18 hours of CPD each year. This is self-certified.	Office inspections (certain % of offices audited every year) and during these compliance with CPD is checked. Inspections also audit information security, office management, trainee supervision, compliance with AML etc.
Germany	Mandatory CPD rules apply only to specialist lawyers (fachanwälte), and not to the general body of lawyers. Lawyers holding specialist certifications must complete 15 hours of CPD in each area of specialisation.	The Bar can issue a reprimand but the disciplinary court can suspend a lawyer from representing clients in court for 1-5 years and limit this sanction to certain fields of law.
Hong Kong - Solicitors	A solicitor or a trainee solicitor must accumulate 15 CPD points in each CPD practice year. How points can be obtained is flexible and can include coaching and participation on Law Society committees. Scheme is based on self-certification. Practitioners must keep their own training record for 2 CPD practice years and these may be audited.	<p>The Hong Kong Law Society requires all new and practising solicitors and new principals to undertake the Society's Risk Management Education programme for their designated level. This can be offset against their annual CPD requirement and any surplus carried over to the following practising year. All practising solicitors must then complete 3 hours of risk management electives annually.</p> <p>Additional practice (and possibly interview) requirements are needed to obtain accreditation as a Law Society Solicitor-Mediator. Over a four-year period, a total of at least 20 CPD points in ongoing mediation training must be obtained out of the annual CPD requirement of any individual solicitor-mediator.</p>

Jurisdiction	CPD Requirements	Other Regulatory Tools for Competence Assurance
Ireland - Solicitors	<p>Rules governing the CPD requirements for Irish solicitors take the form of Statutory Regulations.</p> <p>These require:</p> <ul style="list-style-type: none"> • A solicitor who is not a sole practitioner or a compliance partner and/or an anti-money laundering compliance partner: the CPD requirement for the 2021 cycle is 20 hours, to include a minimum of 3 hours management and professional development skills and a minimum of 2 hours regulatory matters. • A solicitor who is a sole practitioner or a compliance partner and/or an anti-money laundering compliance partner: the CPD requirement for the 2021 cycle is 20 hours, to include a minimum of 3 hours management and professional development skills and a minimum of 3 hours regulatory matters, of which at least 2 hours shall be accounting and anti-money laundering compliance. <p>There is a maximum limit of 7 hours CPD which may be completed within a single day.</p> <p>In addition to traditional ways of acquiring CPD, Irish solicitors may also claim up to seven hours CLE credits for time spent as a solicitor adjudicator on a tribunal.</p>	<p>Irish solicitors are required to maintain a record of their completed training and compliance with the CPD requirements, together with documentary proof of attendance. Solicitors are required to certify their compliance on an annual basis. The Law Society monitors compliance with the obligatory CPD requirements and may audit the training records of any solicitor at any time.</p>
New Zealand	<p>A NZ lawyer must</p> <p>i) develop and maintain an annual written Continuous Professional Development Plan and Record which must include:</p> <p>(a) a description of the lawyer's current learning needs.</p> <p>(b) a description of the lawyer's proposed actions to be undertaken to meet the learning needs.</p> <p>(c) a description and details of the activities undertaken by the lawyer to meet the learning needs, including:</p> <p>(i) a record of the hours involved and undertaken in respect of each activity.</p> <p>(ii) a reflection on each activity; and</p>	<p>A lawyer must give the Law Society an annual declaration of compliance with the CPD requirements.</p> <p>The Law Society may at any time audit a lawyer to verify compliance with these rules. An organisation with effective policies and procedures in place may apply to the Law Society for approved self-audit status.</p>

Jurisdiction	CPD Requirements	Other Regulatory Tools for Competence Assurance
	<p>(iii) documentation verifying attendance at each activity</p> <p>ii) Undertake a minimum of 10 hours CPD if providing regulated services.</p>	
Northern Ireland – Solicitors	<p>A full-time practising solicitor must complete the following minimum CPD hours (subject to any exemption):</p> <ul style="list-style-type: none"> • A total of 15 hours (of which a maximum of 5 hours can be Private Study). <p>The remaining 10 hours of Group Study, which includes webinars and online learning, must include:</p> <ul style="list-style-type: none"> • A minimum of 2 hours Compulsory Risk Management CPD (only if the solicitor is in Private Practice) • A minimum of 3 hours Compulsory Conveyancing CPD (only if the solicitor undertakes or is involved in any conveyancing transactions). 	<p>All Principals, Consultants and Assistant Solicitors in private practice are required to complete 2-hour Compulsory Risk Management CPD covering the following topics:</p> <ol style="list-style-type: none"> 1. Risk for firms as a result of Covid-19 and the changing work environment. 2. Cyber-crime & risk management. 3. Anti-Money Laundering/Counter Terrorist Financing compliance update. 4. Risk for firms through increased use of technology & email.
Scotland – Barristers	<p>Advocates are required to undertake 15 hours of CPD per year.</p>	<p>The Faculty of Advocates introduced a Quality Assurance Scheme in 2016. Under this scheme, each year the Faculty assesses approximately one fifth of the practising bar. Advocates are called for assessment in order of seniority, starting with the most senior advocates. The assessment of the advocate's advocacy skill consists of an oral advocacy exercise. The advocate may choose one exercise from a list of general civil or criminal exercises depending on the individual's practice. Each advocate's presentation is video recorded and assessed by a member of a group of senior advocates who have been nominated by the Dean and trained by the Director of Training & Education and the QA Director. If the advocate's presentation does not meet the required standard he/she will undertake a second assessment using a different exercise and in front of a different assessor who has not been informed of the previous result. Feedback and assistance are available between the first and second assessment. If in the second assessment the required standard is still not met he/she is required to undertake the full devil (trainee advocate)'s assessment the following year, prior to recommencing practice.</p>
Scotland – Solicitors	<p>All solicitors are required to undertake a minimum of 20 hours (CPD in each practice year.</p> <p>Of those minimum 20 hours, a minimum of 15 must be verifiable CPD. Up to 5 hours may be by private study and as</p>	<p>The Law Society of Scotland requires solicitors who are entering a partnership/starting their own firm to undertake the compulsory Practice Management Course and members seeking accreditation as a Solicitor Advocate to undertake the Rights of Audience course.</p>

Jurisdiction	CPD Requirements	Other Regulatory Tools for Competence Assurance
	<p>of the CPD year commencing 1 November 2018, one hour of risk management CPD must be included. Solicitor Advocates must complete 10 hours of mandatory Solicitor Advocate CPD as part of the minimum 15 hours of verifiable CPD.</p> <p>As well as the hours requirement solicitors are required to plan, record, and reflect upon their CPD activity each year.</p>	<p>The Law Society also offers Certification courses in risk management and governance and cyber security which can be counted towards the mandatory CPD requirement. These certificates are also available to non-members.</p>
Singapore	<p>Number of CPD points to be completed by Singapore lawyers depends on years of post-admission experience:</p> <ul style="list-style-type: none"> • Less than 5 years practice = 16 points • 5-15 years practice = 8 points • More than 15 years practice = 4 points <p>Content of CPD should deal primarily with:</p> <ul style="list-style-type: none"> • matters of practice of law, have significant intellectual or practical content, and seek to extend the knowledge or skill of a solicitor; or • have significant intellectual or practical content, and deal with one of six areas of management or professional skills, e.g., information technology, financial literacy, presentation skills. <p>As a minimum, half of required CPD points must be earned from accredited activities.</p> <p>An annual declaration of compliance or exemption is required and a record and evidence of CPD activities to be kept. The Singapore Institute of Education has audit powers in relation to CPD compliance.</p>	<p>The Singapore Institute of Legal Education encourages lawyers to take its courses in topics such as risk management and wellness, but these are not compulsory.</p>

Annex B: Case Studies



The Law Society of Alberta

At the beginning of 2020, the Law Society of Alberta launched a new five-year strategic plan (2020-24). One of the four strategic themes for this period is improving "Competence and Wellness" and the plan sets a number of strategic goals:

1. Evaluate and improve the training programs for new lawyers.
2. Increase the practice management and client relationship management skills of the profession.
3. Broaden the concept of competency, within both the Law Society and the profession, into non-traditional areas, such as technological and cultural competence.
4. Reduce the stigma related to mental and physical health issues by creating a supportive regulatory environment.
5. Increase dialogue with the profession about ways it can innovate to provide efficient and effective legal services and provide resources to support technical competence.

These strategic goals were also informed by a series of surveys of articulated lawyers and newly qualified lawyers undertaken in 2019. The Law Society began by suspending its CPD requirements for two years (2020–2021), in order to create the policy space to improve the overall competency requirements for lawyers both in articling and throughout their career and to mark a period of 'reset'.

In the remainder of 2020, the Law Society progressed two further projects relating to competence:

A mandatory Indigenous Cultural Competency education requirement for all Alberta which is designed to meaningfully address obligations arising from the Truth & Reconciliation Commission's (TRC) calls to action. This was approved by the Benchers in October 2020 and will be rolled out from 2021 onwards.

A new lawyer competence framework which will provide the basis for the development of future work on more experienced lawyer competence.

In December 2020, the Board of Benchers of the Law Society accepted all of the recommendations of a report on 'Lawyer Licensing and Competence'.

This will entail:

- The Law Society mandating Periodic CPD Programming in Areas of "Universal Competence", such as cultural competence.
- Better training and support in the development of self-assessment skills and learning plan development.
- More rigorous follow-up on learning and development, through random audits.
- The development of an alternative program of continuing learning for lawyers with 20 or more years of experience where they can satisfy their CPD requirements through a

range of activities such as public service or public legal education. “Mentoring, adding to the law society’s database of case studies covering lessons learned, lecturing at university etc.”

- The development of an online education program that lawyers must complete if they want to enter sole practice in Alberta.

The approach to initial lawyer competences which has been developed is now intended to form a basis for the development of competency frameworks for other levels of practice and this will be the focus of work in 2021.

Nederlandse Orde van Advocaten (NOvA)

In 2015 the Netherlands Bar (NOvA) was reorganised, and a Supervisory Board was established to oversee in-practice regulation and the handling of complaints by local bar presidents. A revision of the Advocates Law then entered into force in 2016 and this has paved the way for the introduction of some significant changes in the way in which the Netherlands Bar has approached in-practice supervision.

In 2020 the NOvA rolled out a new quality management approach. This reinforced existing obligations of a lawyer in the Netherlands to provide good quality, not only for the individual parties seeking justice, but also in the wider interests of justice.

From 1 March 2020 all Dutch lawyers had to register the areas of law that their practice would carry out. Every lawyer had to register for at least one and at most four areas of law on qualification.

As a baseline ongoing competence requirement, every lawyer is expected to obtain 20 mandatory CPD points each year and 10 of these points must be carried out in any of the areas of law that a lawyer has registered.

Since 1 March 2020, lawyers in the Netherlands have been required to pass annual quality tests by participating in structured feedback. Lawyers can choose one of three options in order to meet their structured feedback obligations:

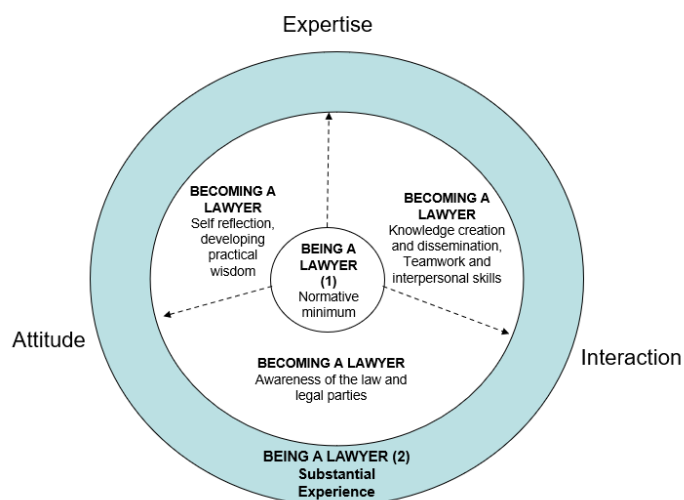
- Expert peer review – in which a designated expert reviews at least five files for review and discussion (at least 4 hours per year).
- Intervision – in which a group of lawyers discuss ethical dilemmas in a periodic conversation led by an expert moderator (at least 8 hours per year).
- Structured Peer Consultation – in which a group of lawyers led by an expert moderator discuss issues of professionalism (at least 8 hours per year).

Over the past few years NOvA has been focusing on training moderators and discussion leaders for Intervision and at the beginning of January 2021 had 450 individuals trained and registered. The focus of the system has now shifted to training reviewers for peer review and in spring 2021, 'Reviewer Peer Review' courses will start, and NOvA has established general assessment criteria for these courses.

In addition to structured feedback, and as part of the quality management approach, NOvA is strengthening the capacity of its lawyers to engage in self-assessment, most notably in relation to ethics. The Bar has developed a self-assessment tool in 2020 which is designed to help lawyers to gain insight into how they are performing as lawyers. Use of the self-assessment tool is voluntary and there are no "right or wrong" answers, it is simply intended to prompt reflection on different dimensions of being a lawyer. Use of the tool will earn a lawyer one of the 20 CPD points that they must undertake in any year. The tool was piloted in January 2021 with a test group of 100 lawyers and the final version of the tool will be rolled out in March 2021.

The tool is based on the model set out below, which is derived from academic work undertaken by Erasmus University. This represents a high-level ongoing competence framework, designed to underline how a lawyer is supposed to develop in different dimensions from the starting point of initial qualification, in order to become a fully-fledged lawyer.

Figure 6: A Model of Lawyer “Craftsmanship”



These quality tools are reinforced by a number of other elements:

- Law firms must explain how they are going to fulfil their obligations in relation to ongoing competence of individual lawyres, office organisation, financial accounts, client money, AML, etc.
- Lawyers are also given access to an online ethics application – Dilemmapp.
- Voluntary membership of specialisation associations focusing on specific areas of law are seen as complementary and supportive of the development of best practices.
- All of this is underpinned by a new enforcement framework that was established in October 2020⁷³

⁷³ Summarised at <https://www.advocatenorde.nl/de-advocaat/toezicht-2>

Victorian Legal Services Board and Commissioner

In June 2020, the Victorian Legal Services Board and Commissioner (VLSBC) launched a review of the CPD system in the state. This resulted in the publication of a report in November 2020 which made 28 recommendations for improving the CPD system. The Board is reviewing the report and recommendations and is expected to release a regulatory response early in 2021.

The Commissioner observed in an update shortly before the end of the year that “While there are some quick wins in the recommendations, others may take some time and resources to implement. The recommendations relating to ethics align with the Royal Commission’s recommendations, so this of course will be a priority for our attention”.

The recommendations made are as follows:

RECOMMENDATION 1

The VLSBC should actively promote and encourage the adoption of reflective learning approaches by working with CPD stakeholders to develop guidance and template materials that would assist lawyers to consider their learning and development needs and to prepare learning and development plans.

RECOMMENDATION 2

- (a) The VLSBC should work with CPD providers to identify ways that CPD activities could more fully incorporate adult learning principles, especially the programs delivered in the Professional Skills, Practice Management and Business Skills, and Ethics and Professional Responsibility subject areas.
- (b) The VLSBC should work with CPD stakeholders to support the establishment of discussion groups and other communities of practice for lawyers with common interests.
- (c) The VLSBC should work with CPD stakeholders to develop guidance materials to assist lawyers who are presenting CPD sessions to structure and deliver their presentations using adult learning principles to achieve better engagement, satisfaction, and positive learning outcomes.

RECOMMENDATION 3

The VLSBC should seek changes to the Uniform CPD Rules to:

- (a) recognise private study of any materials undertaken for the purpose of increasing a practitioner’s knowledge and/or skills relevant to their practice needs and aspirations
- (b) remove the five-point limit in the Solicitors CPD Rules for audio/visual materials that are interactive, and
- (c) permit private study that is not interactive to be counted, up to a limit of five hours, and if recorded by the practitioner in a learning diary.

RECOMMENDATION 4

The VLSBC should establish a Competency Framework Working Group as a sub-group of the CPD Steering Committee to undertake development of a competency framework for Victorian lawyers.

RECOMMENDATION 5

The competency framework should be developed incrementally and should not be overly prescriptive. It should initially focus on areas of greatest need and utility, including the competency skills for recently admitted lawyers.

RECOMMENDATION 6

To reduce the size of the task, the development of the competency framework should draw on work already undertaken by professional associations (including non-legal profession associations in respect of generic skills), by law firms and by legal regulators in other jurisdictions.

RECOMMENDATION 7

- a) The VLSBC should encourage the development of mentoring programs by its stakeholders for lawyers to participate in and count towards their CPD goals.
- b) Mentoring should only count towards CPD goals if the mentor has undertaken training, if it is consistent with the programs developed by CPD stakeholders, and if a learning journal is kept by the mentor or mentee. There should be a cap on the number of hours mentoring that can be counted towards CPD goals.
- c) If the VLSBC forms the view that mentoring is not covered by the current Solicitors CPD Rules, it should seek to expand the definition of CPD formats to include mentoring. It should consult with the Victorian Bar before approving mentoring for purposes of the Barristers CPD Rules.

RECOMMENDATION 8

The VLSBC should investigate the options for ensuring that CPD undertaken by newly admitted solicitors during their supervised period of practice and barristers within their first three years of practice helps them to develop values and behaviours that will sustain their career, including in the areas of ethics, diversity and inclusion, sexual harassment, family violence, and health and wellbeing.

One option would be to make completion of such requirements a precondition for the grant of an unrestricted practising certificate.

RECOMMENDATION 9

Newly admitted solicitors should be required to keep a CPD learning plan and reflective journal about their CPD activities during their supervision period.

RECOMMENDATION 10

The VLSBC should work with its CPD providers to identify and support CPD activities that more satisfactorily meet the needs of lawyers not in private practice.

RECOMMENDATION 11

- a) The VLSBC should publish guidance on the topics that are covered by each subject area, especially in the Practice Management and Business Skills, and Professional Skills areas.
- b) The VLSBC should publish guidance to clarify the topics that could be undertaken in the Practice Management and Business Skills stream by lawyers who work in the corporate, government and community sectors or are at the Victorian Bar.

RECOMMENDATION 12

The VLSBC should seek changes to the Uniform CPD Rules to require a minimum of five points annually to be acquired within the non-Substantive Law streams. The proposed CPD Steering Committee should support providers to design and deliver more innovative learning programs in these areas.

RECOMMENDATION 13

The VLSBC should establish an Ethics CPD Reference Group to work with the CPD Steering Committee. The Reference Group should include CPD stakeholders as well as representatives from universities and other bodies (or it could work with such experts).

The Reference Group's agenda should include:

- supporting the development of learning templates and guidance for delivering Ethics CPD training
- supporting the development of more in-depth Ethics CPD training modules for those with a special interest in, or responsibility for, lawyers' ethical conduct, such as Ethics Co-ordinators (see Recommendation 15(b) below)

- identifying particular areas where ethical challenges are common, or challenges are emerging, or where there is a gap in current Ethics CPD provision
- working with CPD providers to support the development of Ethics CPD activities in respect of such challenges and gaps, and regularly highlighting the current challenges and gaps to the profession
- working with specialisation committees and subject matter sections and committees to identify ethical issues that could be included in CPD courses and activities
- working with relevant stakeholders to assess the availability of appropriate Ethics CPD activities for corporate in-house counsel, government lawyers and community lawyers and how any gaps could be addressed.

RECOMMENDATION 14

The VLSBC should amend its Policy on Management Systems for Law Practices to include an additional guideline objective of requiring law firms to have in place a process for the management of ethical issues in a firm.

RECOMMENDATION 15

- a) Solicitors' firms should seek to organise Ethics CPD activities for their lawyers on a whole-of-firm basis to promote a common understanding of the firm's approach to ethical issues.
- b) The VLSBC should encourage each firm to appoint an Ethics Coordinator who would be responsible for a firm's ethics processes and for ensuring appropriate Ethics CPD training for the firm's lawyers.

RECOMMENDATION 16

Ethics CPD should be a strong focus for the increased CPD requirements for newly-admitted lawyers proposed at Recommendation 8.

RECOMMENDATION 17

The VLSBC should continue to implement the regulatory strategy it developed in response to its survey on sexual harassment in the profession. The strategy's progress should guide any decision on the use of CPD for this topic.

RECOMMENDATION 18

The VLSBC should actively promote and support training in the areas of diversity and inclusion, family violence, and health and wellbeing.

RECOMMENDATION 19

The VLSBC should actively promote and support programs for lawyers to:

- a) gain an understanding of the technologies commonly used by lawyers, their clients and the courts, the legal frameworks for such technologies, and the risks associated with them; and
- b) broaden lawyers' abilities to recognise, use and develop technologies to improve their services and create new types of services.

RECOMMENDATION 20

The VLSBC should encourage employers to set aside a minimum amount each year to cover or contribute to their employee lawyers' CPD expenses.

RECOMMENDATION 21

The VLSBC should monitor the quality of CPD programs in non-Substantive Law programs and keep under consideration the possibility of introducing a voluntary accreditation system to address any continuing concerns about their effectiveness.

RECOMMENDATION 22

The VLSBC should not seek to abolish or change the 10 CPD credit minimum threshold requirement.

RECOMMENDATION 23

The VLSBC should revise the content of its CPD policy to reflect the approach outlined in this report. It should also consider developing a page on its website that provides more information and assistance about CPD. It could include:

- information about relevant legislation, rules, policies, and guidance

- competence statements as they are developed, and updates on the progress towards a competency framework
- learning development plans and guidance around reflective practice, including examples and templates
- current and emerging areas of risk
- a learning register for recording CPD activities, which could also provide reminders and suggestions relevant to the lawyer's preferences.

RECOMMENDATION 24

The VLSBC should regularly liaise with CPD stakeholders to identify and publicise particular areas of practice that present current or emerging competence risks. It should also conduct an annual workshop to identify current and emerging risks that could inform the development of CPD programs.

RECOMMENDATION 25

The CPD Audit program should continue to develop its approach to include both a random element and lawyers who have either come to the attention of the VLSBC previously or who practise in areas of identified risk.

RECOMMENDATION 26

The CPD Audit program should also use the opportunity of an audit to gather information about lawyers' preferences and engagement with different types of CPD activities.

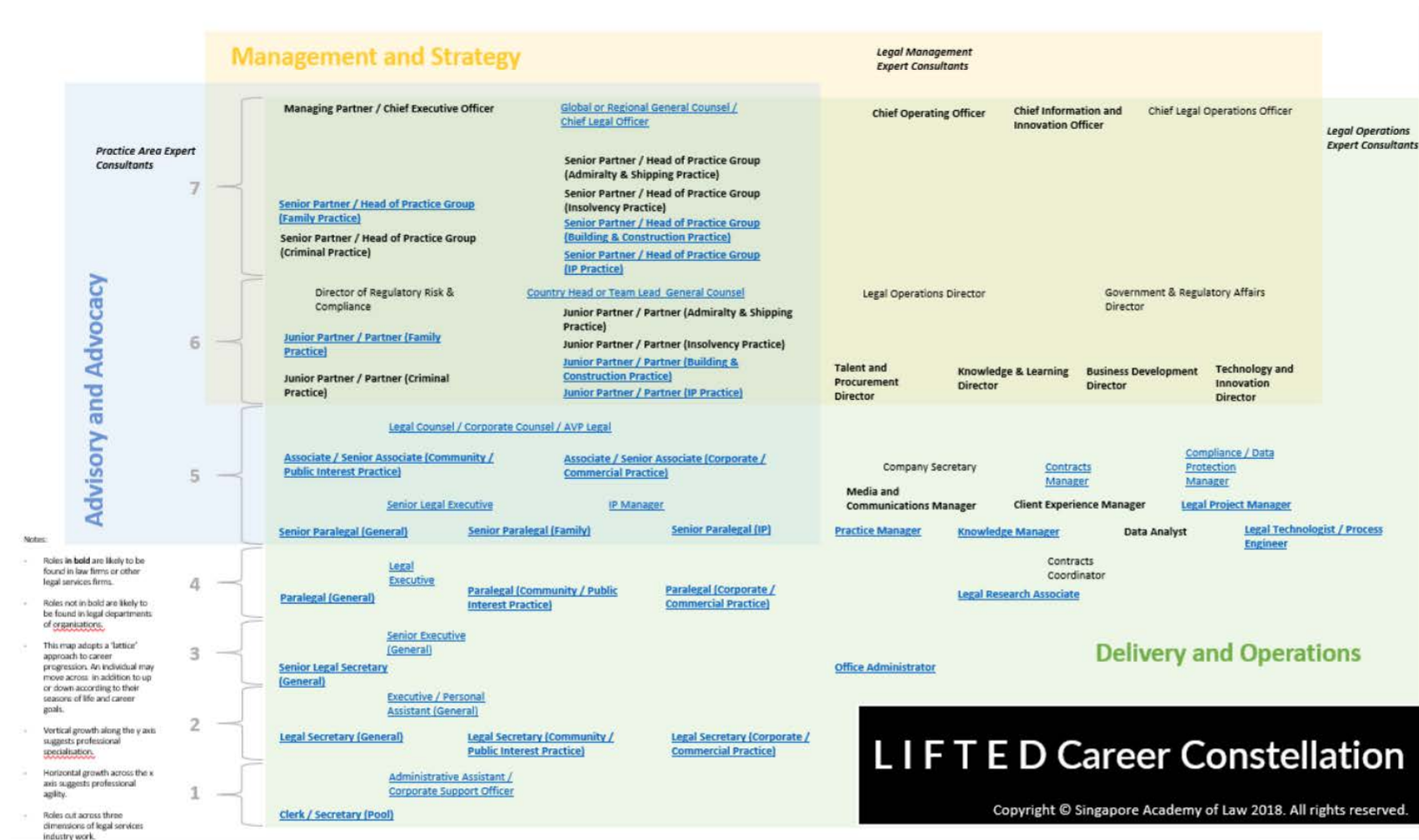
RECOMMENDATION 27

The VLSBC should establish a CPD Steering Committee with representation from the Law Institute and Victorian Bar to implement the recommendations of this review that are accepted by the VLSBC. The Committee should also include at least one expert in CPD, adult education or another relevant field, and one lawyer from the in-house, government or community sectors.

RECOMMENDATION 28

The Steering Committee should develop a three-year plan for implementation of the review and should report back to the Board of the VLSBC on a regular basis.

Annex C: Singapore Academy of Law Career Constellation Mapping



Annex D: Lawyer Quality Indicators and the Role of Legal Regulators

IAALS suggested Quality indicators	Role of ongoing competence	What role for a regulator?
A Lawyer demonstrates effective communication skills	Lawyers/legal service providers are continually updating their communication skills (especially in relation to vulnerable groups) and are updated on role of technology in this (E.g. client portals where appropriate, cybersecurity and data protection)	A regulator might set out some broad parameters on certain aspects of this and there may be specific accreditation/CPD requirements set around dealing with vulnerable clients, but for the mainstream of legal services responsibility falls to the market/professional bodies and individual legal service providers.
A Lawyer has the right behavioural attributes	Lawyers/legal service providers maintain their understanding of changing ethical codes and understand changing societal requirements for cultural competence.	Beyond flagging that certain behaviours are no longer tolerated; or by taking measures to nudge the profession (e.g., thematic reviews, guidance, required CPD etc) regulators do not have much of a role. It is up to individuals to manage their own behaviours.
A Lawyer is able to produce the best possible outcome for their case	Is it possible to determine what standard outcomes might look like (e.g., a simple will might only require x number of lawyer hours and cost £y, more complex circumstances (e.g., blended families, overseas property etc) might take between a and b timescales and cost £c -£d)?	Whilst this may be a predominantly market driven role – to spread greater understanding of ‘product and service standards’ in the legal sector, there could be a role for lawyer regulators (see e.g., Dolin and Curran).

IAALS suggested Quality indicators	Role of ongoing competence	What role for a regulator?
<p>A Lawyer is able to demonstrate and apply legal knowledge and expertise effectively</p>	<p>Are there industry standard benchmarks that could be developed for particular pieces of work? (See Linna)</p>	<p>Traditional CPD has focused in this area but as an input measure. Can regulators contribute to the understanding and standardisation of processes underlying key legal activities (e.g. in the same way that contract software is now standardising and simplifying contract drafting.</p>
<p>A Lawyer demonstrates persistence and diligence</p>	<p>A personal characteristic – for lawyers to be aware that this is important, along with other characteristics of good service</p>	<p>Beyond assisting past clients in passing on feedback about this dimension of any lawyer's service (e.g. through transparency mechanisms), there is little beyond setting market expectations at a general level that a regulator can do in this area. Although these are attributes that could be emphasised in any lifelong learning framework for lawyers.</p>

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