
Literature Review

5. Continuing Professional Development (CPD)

Introduction

The first problem for any regulator becoming involved in CPD is being clear about what it is trying to regulate and why ... Just as there is no single, right way of doing CPD, so there is no single right way of regulating it.

CPD Review Working Group (2011, pp. 5 and 12)

There is still confusion in the minds of professional members as to what CPD is, what it is for, how it should be assessed and supported and to what degree compliance with CPD programmes should be compulsory.

Friedman (2001, p. 6)

- 1 Continuing professional development (“CPD”) for legal practitioners (in some jurisdictions: continuing legal education (“CLE”)) is to be examined within the context of a broader educational and professional context from which some terminology and concepts can usefully be drawn.
- 2 Firstly, a distinction may need to be made between “formal” or “accredited” CPD activity, sanctioned by the regulator within the context of a defined scheme, and a more diffuse on-going process of learning in the workplace (Houle, 1980) taking place irrespective of the functions of the CPD scheme. Such informal learning, about which there is a considerable literature, is outside the scope of this discussion, but it is important to recognise that regulated CPD is not the only, or even the most extensive or individually important, context of learning for legal professionals¹ and some professions, as will be seen in this chapter, do count such learning for CPD purposes. It is perhaps notable that although prior discussions cited by ACLEC in its *Second Report* (1997) envisaged no more than a mechanism for technical updating (ACLEC, p. 13) or refresher courses for the “older members of the profession”; ACLEC itself preferred an approach closer to what is now often referred to as a commitment to this broader “lifelong learning”.
- 3 A second useful concept serves to distinguish between types of CPD schemes: those whose focus is on compliance (“the sanctions model”: Madden & Mitchell, 1993) and those whose focus is on personal development (“the benefits model”). A related distinction can be seen between regulatory schemes which record and regulate inputs (hourages, participation in mandatory elements) and those which seek to achieve the much more difficult task of measuring and recording outputs (learning, impact on personal practice). Evaluation, where it occurs, may be limited to a questionnaire focussing on quality of delivery rather than impact on practice (and if such impact is assessed in the questionnaire it will only, by definition, be immediate impact, see Muijs & Lindsay, 2008, p. 196). In the latter study, (p. 201) which tested a possible model for more in-depth evaluation of CPD activity, evaluation questionnaires used in assessment of teachers’ CPD were found always to ask about “participant satisfaction” in 35.2% of cases, but about participants’ use of new knowledge and skills in only 6.2%:

[O]nly those coordinators who operate at the highest level of evaluation evaluate use of new knowledge and skills. Conversely, this is therefore the type of evaluation least likely to be encountered in schools.

(Muijs & Lindsay, 2008, p.204)

¹ So, for example, in a study of young lawyers in New South Wales, (Nelson, 1993), “in-house staff development” was placed third after “ask someone else” and “look it up yourself”, with “non participatory” lectures in fourth place.

Further discussion of measurement of impact, from a Professional Associations Research Network (“PARN”) study, appears in Friedman (2005, pp.73, 95).

- 4 Bodies adopting a pure sanctions model have been criticised as treating the desired competence and regulatory compliance as coterminous:

The effectiveness of CPD practice and provision is measured in terms of compliance with CPD requirements, since the desired outcome is compliance.

(Madden & Mitchell, 1993, p. 27)

Alternatively, the existence of a mandatory scheme may be seen as an appropriate regulatory defence:

[t]he argument is that in every profession there is a residuum – preferably a small one – of members whose practice fails to come up to standard. It is largely for their sake that defensive measures have to be taken. Thus ‘formal courses don’t really meet the needs of lively members of the profession, but they help to ensure minimum standards’.

(Becher 1996, p.53)

Insofar as CPD schemes for legal practitioners are directed at maintenance of (measurable, sanctionable) “competence” to practise,² regulators are adopting this approach. Different stakeholders in the process may well hold differing concepts:

Professionals mostly believed in self-assessment as part of professional self-reflection. If CPD is to be assessed by others, it should be through formative assessment, i.e. it should aim to help professionals improve. ... However the majority from professional bodies as well as employers view assessment as summative, that is, as a way of evaluating professionals and of accounting for CPD activities. Those representing professional bodies mostly viewed assessment as an important way of demonstrating the maintenance of competence. Employers valued assessment for judging if CPD activities met organisational needs.

Friedman, 2005, p.8)

Nevertheless, an assumption, without more, that recording of attendance at formal CPD activities is, by definition, a recording of learning – leading to maintained or improved competence - obtained from such activities, is flawed. On the other hand, learning resulting from CPD activity need not be confined to (mere) competence or negligence-avoidance:

there is a potential role for the professional body in encouraging solicitors to aspire to levels of professionalism that significantly *exceed* those set by the statutory regulator.

(Hunt, 2009, p.88, our italics).

- 5 It will be apparent that much of the literature discussed in this section, both inside and outside the legal professions, is very recent. For the legal professions, the immediate driver is the Legal Services Act 2007; for medicine, the advent of compulsory revalidation of doctors. Although it might be possible to infer that this constant review of CPD frameworks betrays a widespread dissatisfaction with process, if not content, major current themes for the professional sector as a whole identified in the Institute of Continuing Professional Development multi-disciplinary research of 23 professions, which included the then Bar Council and Law Society systems, (2006, p.4) were:

² For the avoidance of doubt, specialist accreditations, such as those for rights of audience, or as pupil supervisor, have been excluded from this discussion.

- a) A need for professional bodies to be “seen to be responding appropriately to the public perception that they oversee the competencies of their members”, a consumerist approach readily apparent in current approaches to legal services regulation (see DCA, 2005, Legal Services Consumer Panel, 2011, Legal Services Board, 2012);
- b) A response by the professions of continual review and modernisation of their CPD systems, “imposing greater requirements and obligations to comply ... in the belief that this will increase competency”;
- c) That monitoring and policing compliance “presents a major challenge for the professions. Modernisation of CPD requirements has emphasised the enormous variety in professionals’ educational needs, and professions are therefore increasingly requiring their members to set their own curriculum” (an approach visible in the medical and accountancy professions described below)
- d) “Substantially increasing the monitoring and compliance obligations presents major problems in terms of the professions’ relations with members”.

This research therefore advocated the considerable challenge for professions and regulators of instituting “a system of incentive that enables both effective monitoring of CPD activity and engages, rather than alienates, members of professional bodies. Encouraging and rewarding voluntary CPD activity, over and above any necessary and existing level of compulsion, is the most effective means of propagating good practice” (p.4).

- 6 Boud and Hager (2012) have more recently argued more generally for a concept of CPD that is more clearly located in practice than in decontextualized classroom activity which has historically been the focus for the legal professions. They acknowledge, however, that ... it is clear that some forms of practice are likely to be so circumscribed and limited that continuing engagement in them alone will inhibit the broader development of the professional. This implies that CPD requires far greater opportunities to engage in practices that extend the repertoire of practitioners and that the focus needs to move from an analysis of individual knowledge skills and competencies to an analysis of environments and what the practices in them generate in terms of extending practice scope. ...Professional bodies would need to be more nuanced in their recognition of members ... and accredit specialisations and particular scopes of practice rather than taking a one-size-its-all stance. (p. 27)

Current standards and practices in professions regulated under the Legal Services Act 2007

- 7 In this section we set out the existing standards and practices of the regulated legal professions and, where relevant and available, outline current debates and reviews for each profession and some degree of comparison with approaches taken in other jurisdictions.³ The multiplicity of schemes in current operation also suggests that it is useful to look at broader, cross-border and cross-profession approaches designed for consistency and mutual recognition between schemes.

³ I has not been possible to examine all existing schemes, in federal states particularly. Summaries of all USA schemes can be found at <http://www.digilearnonline.com/stateReqs.asp> on a state-by-state basis and for Canada at http://www.canadian-universities.net/Law-Schools/Legal_Education.html. Summaries for Europe are at <http://www.cbbe.eu/index.php?id=276&L=0>.

Literature on the pedagogic aspects of CPD (or CLE) in the legal profession or professions specifically is comparatively rare. As long ago as 1997, Roper recommended the construction of a “conceptual framework” for CPD for lawyers, as a distinct task:

There is considerable development of theory in a number of areas related to CPD, such as skills, the nature of professions, how professionals work, adult learning, lifelong learning and management. What is lacking, so far as CPD for lawyers is concerned, is the bringing together of these various elements in some cohesive and useful way to provide a conceptual framework.

(Roper, 1997, p.172)

- 8 Shortly before the extension of the solicitors’ CPD scheme to all practitioners, the Law Society conducted a study (Hales, Stratford & Sherr, 1998) of 568 solicitors of 15+ years post-qualification experience. The results of this study cast some light on possible patterns of CPD activity in the absence of a regulatory mandate. Of the senior solicitors in the sample, only 14% (mostly sole practitioners or in smaller firms) had not participated in any form of CPD at all; there was notably a higher degree of voluntary compliance for those working in larger firms and even greater compliance in the public and in-house sector. In total (p. 32) “the median was about 150 hours over the last three years and only 5% reported less than 50 hours”. Whilst most individuals focused on substantive law, a third of respondents (p. 2) also covered aspects of professional skills and 99% (p. 30) said that they used reading as a learning method. Only 16% of the non-attenders (p. 29) responded that they “knew enough already” (and 73% agreed that solicitors over a certain age should not be exempted from compliance, p. 43). Participants were also asked (p. 39) to identify areas which might be compulsory in any CPD scheme for senior solicitors, of which the top five were running a firm or practice; own specialism; professional conduct; client care and avoiding negligence claims.

- 9 Slightly earlier, two studies in New South Wales (Nelson, 1993; Roper, 1993) investigated the CPD participation of junior (3 years post qualification, an equivalent to 1 year PQE in England and Wales) and very senior (20 years + post qualification experience) solicitors within the context of a mandatory scheme requiring 10 points annually. The junior lawyers, as might be expected, reported a great deal of learning activity, as, in the week prior to the administration of the questionnaire, “slightly more than half had spent up to 4 hours in learning activities; two fifths between 5 and 9 hours and about 7% ten or more hours” (Nelson, 1993, p.171). Of the older lawyers (Roper, 1993), at the point of interview, 22% had already attained 10-15 hours of CPD (within this example, sole practitioners and partners were more likely to have attended 10+ hours), of which the most common area covered was “new developments” (which 45% had covered for up to 10 hours: pp. 92-93). In a contrast to the findings of the English study, 86% had not attended any course dealing with anything other than substantive law and 84% had not attended any practice management courses (p. 94). Nevertheless, the top responses to reasons behind participation were to improve provision of legal services, improve proficiency and productivity, with the fact the scheme was mandatory rated only in sixth place.

- 10 A further survey of 150 solicitors’ firms in the Republic of Ireland (McGuire, Garavan, O’Donnell & Murphy, 2001) identified a number of issues arising from the broader CPD literature, including problems of professionalization, ownership and responsibility for CPD as well as barriers to CPD (a tension between dictates of survival of the business and longer term benefits); financial and other costs of CPD versus investment; diversity of learning strategies found in CPD schemes and the need for organisational structures which can

support CPD (p. 25).⁴ Their empirical findings suggest issues of time and expense as a barrier to more effective CPD activity in smaller firms; but that there was a strong “traditional” approach in use of courses and reading, as opposed to coaching and mentoring and, at the time of this research, online delivery. Perhaps most significantly, as the issue of mandatory topics of CPD coverage, including mandatory coverage of aspects of COBR, will form a theme in this chapter:

CPD is conceptualised in terms of core management and personal skills rather than specific legal knowledge and/or skills. Management skills were prioritised as the most important CPD area, with only one specific legal expertise area⁵ ranked in the top five priorities.

(McGuire *et al*, 2001, p. 38)

- 11 More recent work by the BSB, SRA and IPReg in this jurisdiction is reported separately below in the discussion of the individual regulated professions.
- 12 Another theme – as outlined in paragraph 2 above - will recognise that not all learning, in fact perhaps the minority of learning, takes place in a formal CPD context. Some of the CPD schemes discussed below allow for experiential learning in practice, particularly where there is an emphasis on reflective learning. A related issue (Phillips, 2006) is the contribution to CPD of evidence and evidence-based practice. The significance of such activity for lawyers is addressed by Gold, Thorpe, Woodall & Sadler-Smith:
- How might professional associations learn to appreciate the importance of practice-based learning and how can they provide the necessary credit for their CPD schemes?
 - Could and should CPD be better conceived as a collective and distributed process affecting different subjects working within diverse but overlapping contexts?
 - How can collective and distributed learning be studied, given the constraints and difficulties involved in researching professional practice?
- (Gold *et al*, 2007, p. 248)

Cross-border and model approaches to CPD

- 13 It should be noted that, whilst the Council of Bars and Law Societies of Europe has made recommendations about continuing education, particularly in the light of desires for mutual recognition across the European Union, those proposals were explicitly “not intended to impose a solution or obligation, but to encourage the adoption of continuing training regimes and to confirm a culture of quality and training for lawyers, in the public interest” (Council of the Bars and Law Societies of the European Union (“CCBE”), 2003, p.2). Additionally the Federation des Barreaux d’Europe adopted in a resolution of 2001 the “urgent short term measure” that “[c]ontinuing education equivalent to a minimum of 10 hours each year shall become obligatory throughout the European Union” (FBE, 2001).
- 14 Further investigation of CPD in Europe, across a number of different disciplines, appears in CEPLIS (2010). It is notable that some professions (as, for example, the accountants and construction professionals described below) are subject to regulation at an international level.

⁴ Some of the peculiarities of the structure of law firms in particular are discussed in this context by Watson & Harmel-Law (2010). Further discussion of the different foci of organisational HRD and individual CPE appear in Bierema & Eraut (2004).

⁵ Legal research.

- 15 Further, the CCBE recommendations included a wide range of potentially sanctioned activities. Perhaps rather oddly, “evaluation”, treated in this chapter as involving an analysis of the effectiveness of what has been learned from CPD activity, was proposed to be “done with a weighted allotment of hours/credit points being given for the various methods and duration of training” (CCBE, 2003, p.3), that is, by measurement of inputs, rather than outputs. A non-binding and largely input-focussed model for Continuing Professional Training, promulgated by the CCBE in 2006, (CCBE, 2006) however, contains the following aspects of interest for the current discussion:
1. A suggestion that participation should be accredited (only) where there is proof of participation and of successful assessment;
 2. Recommendations for mutual accreditation and recognition of activities, including cross-border recognition with in the EU;
 3. Recognition of viable CPD activity in teaching, writing articles, peer review, self-study;
 4. A minimum number of hours to be prescribed annually (pro rata where relevant);
 5. The possibility of mandatory content in, for example, ethics, EU law and professional rules;
 6. Provision for exemption and carry over of excess credits into a following year;
 7. Provision for record-keeping.
- 16 A model proposed for the legal professions in Australia (National CPD Task Force, 2007) bears some similarities in assuming a mandatory, minimum hourage system, with reporting and disciplinary implications, a minimum annual component in ethics,⁶ professional skills and practice management and business skills and excluding by omission inclusion of informal experiential learning. The Australian model, on the other hand, includes committee work as a legitimate CPD activity and excludes self-study (other than listening to or viewing study materials). Quality assurance is assumed as a principle (as is cost efficiency and ease of access) but is to be ensured by the quality of those delivering the courses, rather than by imposing a requirement for accreditation of courses or providers. This aspect, of regulators imposing a form of COBR on education providers, is a theme of varied importance for different schemes and professions discussed in this chapter.
- 17 In the USA, a summit sponsored by the American Law Institute/American Bar Association and the Association for Continuing Legal Education (ALI/ABA/ACLEA, 2009) generated the following final recommendations for continuing legal education, which is worth quoting in full:
- ...law schools, the bar, and the bench should partner in the career-long development of lawyer competencies;
 - Law schools, the bar, and the bench should develop and encourage transitional training programs (defined as ones that teach or improve practice skills) to begin in law school and to continue through at least the first two years of practice;⁷
 - CLE providers, MCLE⁸ regulators, the practicing bar, and the bench should create communication frameworks for mandatory CLE rules to ensure that all parties share an understanding of the content of the rules, their needed evolution, and their effects;

⁶ See also a discussion of mandatory ethics CPD in the wider Asia and South Pacific region, O’Brien, 2012.

⁷ Explicit reference is made here to possible introduction of “[p]ost-admission supervised apprenticeships (similar to paid articling in Commonwealth countries)”.

⁸ Mandatory Continuing Legal Education.

MCLE regulators, in collaboration with CLE providers and the practicing bar, should develop appropriate accreditation standards for all varieties of distance learning CLE programs while also updating and improving accreditation standards for in-person CLE programs.

MCLE regulators should accredit training in the content or skills necessary to effectively practice law, even if such content or skills are not directly related to substantive law.

MCLE regulators and CLE providers should work together to develop and implement means of measuring the effectiveness of CLE offerings

Recognising that law firms and other legal employers are significant and regular providers of CLE, MCLE regulators should provide them with the same opportunities to gain accreditation of their programs as those afforded to external CLE providers.

Law schools, law firms, and CLE providers should train their instructors in: teaching skills, effective uses of technology to enhance learning, inter-generational communication issues, the communication of professional values and identity, and the design of effective clinical experiences.

Acknowledging our professional responsibility, the legal community should continue to develop programs that will prepare and encourage law students and all lawyers to serve the underserved.

- 18 We have suggested that the regulators explore the possibility of a common scheme for legal practitioners in England and Wales (and, indeed, neighbouring jurisdictions),⁹ perhaps drawing on the approaches of the Engineering Council (2010); the Health and Care Professions Council (2011) or on the clearinghouse for accreditation operated by the European Accreditation Council for Continuing Medical Education. At the very least, we invite the regulators to consider increased mutual recognition between schemes (an approach employed within the accountancy professions)¹⁰ or the creation of a body to co-ordinate CPD activity for the legal professions (as the Continuing Legal Education Association of Australasia and the Association for Continuing Legal Education and Continuing Legal Education Regulators Association in the USA). A domestic example of such a clearing house, albeit outside law is the CPD Certification Service.¹¹

Regulated professions under the Legal Services Act 2007

Accountants

- 19 ICAS and ACCA are approved regulators under the Legal Services Act 2007 for the purposes of reserved probate business only.
- 20 The Association of Chartered Certified Accountants (ACCA) had 75,305 members in the UK and Republic of Ireland in 2011 (FRC Professional Oversight Board, 2012, p.8). Its CPD system (ACCA, n.d.), consistent with the standards of the International Federation of Accountants

⁹ Reference to neighbouring jurisdictions in this chapter is to Northern Ireland, Scotland and the Republic of Ireland. Investigation has not been undertaken into the bars and law societies of the Isle of Man or the Channel Islands.

¹⁰ In smaller jurisdictions at least, there are examples of joint CPD schemes covering different legal professions. Such is the case, for example, in Mauritius, where a single scheme covers barristers, attorneys (solicitors) and notaries.

¹¹ <http://www.cpduk.co.uk/index.html>

(IAESB, *International Education Standard 7: Continuing Professional Development*, 2012¹²), comprises three routes:

1. The unit route. An individual must complete at least 40 “units” (hours) of CPD each year of which 21 units must be “verifiable” (relevant to the individual’s career; susceptible of application in the workplace and evidenced). An excess of verifiable units in one year, to a maximum of 21, can be carried into the subsequent year. Individual records of both verifiable and non-verifiable activity are logged online. Part-time and semi-retired members (with some constraints, as, for example, this pro-rata route is not available to members with audit responsibility) are required to complete 19 units of non-verifiable activity and to set their own threshold for verifiable activity. Other forms of waiver may be available in exceptional circumstances (such as illness, maternity/paternity leave etc.). Activity provided by ACCA Registered CPD Providers is treated as verifiable.¹³
 2. The approved employer route. An alternative to the unit route, for those employed by ACCA Approved Employers, is to follow the employer’s own employee development programme which is, in effect, accredited as satisfying the entirety of the CPD requirements.
 3. The IFAC route. If a member follows the CPD scheme of another professional accountancy body of which he or she is a member, provided that CPD scheme is IFAC approved and consistent with IES 7, doing so is treated as satisfying the ACCA requirements. This theme of inter-profession mutual recognition of CPD activity emerges in other circumstances, including healthcare and engineering, where there are a number of related professions in a single sector and where individuals may be, or entities may employ, members of more than one. Where dual qualification and transfer between professions is, or becomes possible in the legal sector (e.g. the solicitor who is also a notary, or the barrister who is also a trade mark attorney), and in multi-disciplinary ABSs, mutual recognition may come to have greater significance.
- 21 Review of compliance is by sample taken from members’ annual CPD declarations (the CPD declaration includes an ethical declaration) and review may include questionnaires and seeking of access to individuals’ online records. Refusal to co-operate with a review may be sanctioned by withdrawal of membership.
- 22 The Institute of Chartered Accountants of Scotland (ICAS) had 16,666 members in the UK and Republic of Ireland in 2011 (FRC Professional Oversight Board, 2012, p.8). The ICAS Professional Development Process is consciously cyclical, utilising a four-step process (ICAS, n.d.):
1. definition of current and future role(s)
 2. decide on training and development needs
 3. develop or undertake a professional development programme, and

¹² This supra-national framework for member association of the International Federation of Accountants allows for each of an inputs based, outputs based or combination approach. If input-based, the minimum annual hourage is 20.

¹³ Friedman & Woodhead (2008) cited elsewhere in this paper, concluded, in relation to the model current for ACCA in 2008, that accommodates its international membership, that ACCA implements a primarily input-based CPD scheme, but has moved away from a mere points-gathering exercise by insisting that CPD be relevant to a member’s role. Despite the input-based nature of this scheme, output is certainly addressed, and ACCA has implemented a “professional development matrix,” an online planning tool that assists members in analysing their job roles and prioritizing learning needs. They also self-assess their results by comparing them with the development plan. Although a CPD cycle is not explicitly followed, details of the cycle are provided in guidance for members. CPD records are audited to ensure that development activities are relevant to a member’s role.” (2008, p.39). As the current model refers to a “cycle” rather than a matrix, some subsequent development would appear to have taken place.

4. record any CPD activities undertaken

- 23 As with ACCA, the scheme provides for an Accredited CPD Employer status (ICAS, n.d.). Individuals must keep records (including records of planning and of learning) for three years and are similarly subject to an annual declaration of compliance and monitoring by sample. Activities referred to as legitimate CPD activity (ICAS, n.d.) include the informal and experiential “work-based learning, undertaking new projects at work, on-line reading, researching a particular issue relating to a client or a role, and focused discussions with colleagues or other professional advisers” not generally included in CPD recognition. The overriding principle is that “consideration is given to the requirements of the position and that learning addresses this”.

Barristers

- 24 Discussion of the CPD scheme for the Bar is assisted enormously by the substantial internal review and consultation exercise conducted for the Bar Standards Board in 2011. The results of that consultation have not, at the time of writing, been published. Current provision (BSB, 2011a, d) is, therefore, to be contrasted with the proposed new system (BSB, 2011b, c) set out in a consultation paper which includes both a draft CPD handbook envisaged to be implemented in 2013 and the report of the working group which conducted the Review (including empirical work amongst the profession and comparison with other legal professions and professional bodies outside law).¹⁴ Given the nature and ethos of the profession, it is not surprising that there is a considerable focus on individual professional responsibility, not only in the BSB scheme, but also in other schemes for barristers as a separate profession.
- 25 The strategy derived from the Review to be implemented in the proposed new scheme is stated (BSB, 2011b, p.5) as one which:
1. increases the range of approved CPD activities;
 2. correspondingly increases the number of CPD hours, which established practitioners must undertake each year;
 3. raises the standard of record-keeping;
 4. simplifies the system of reporting; and
 5. simplifies enforcement of the CPD Regulations.
- 26 The draft handbook, consequently acknowledged (BSB, 2011b, p. 121) what elsewhere in this chapter we have referred to as a cyclical approach, emphasising not only the input of participation in activities, but also the prior planning and the subsequent implementation of what has been learned. This was reflected in the template for a portfolio which was to be susceptible to being called in for inspection and which demands a record of “Reasons for attending or undertaking the event/activity and relevance for practice, and reflection on own learning” (i.e., the output) (p. 140). Monitoring in the first instance was proposed essentially to be by self-certification and to be attached to the issue of a practising certificate. Thereafter, a 10% sample was proposed (p. 132). Sanctions – ranging from fine to disbarment – were proposed for non-compliance (although first offenders might be supported and warned) and all CPD records to be produced where the BSB conducts a Chambers Monitoring exercise (p. 132).

¹⁴ Page references are, therefore, to the composite document.

- 27 A distinct new practitioners' programme was to be retained, as is the early career Forensic Accounting Course. Thereafter, practitioners will be required to complete 24 hours annually, of which at least 12 hours must be "verifiable" (p. 125). Verifiable activity (p. 126) included face-to-face and online course (including courses in personal and practice management skills), judicial training, work shadowing teaching and legal writing. Non-verifiable activity included private study (hitherto excluded), research and writing for a textbook or article published in the subsequent year and viewing or listening to relevant broadcast material. Networking and marketing activities have been specifically excluded. Although outside the early career programmes, nothing was to be compulsory, reference has been made (p. 128) to the important areas of "Advanced Advocacy Training"; "Further Ethics Training"; "Equality and Diversity Training"¹⁵ and "Costs". The BSB proposed no longer to accredit course providers (on the basis of the "impossibility of quality assuring the large number of commercially provided courses", p. 131), consequently, courses, whether accredited by another CPD scheme or otherwise, would count provided "the content and objectives fit within the BSB specifications of verifiable CPD" (p. 131). Following consultation (BSB, 2011c) the more flexible definition of CPD has been retained although the proposed increase in hours and range of acceptable activities is to be reviewed. There are still to be no waivers from compliance but there are provisions intended to assist those who are, for example, on parental leave. Initial inclusion of prompts for reflection and self-evaluation in the template portfolio record have been removed.
- 28 By way of comparison amongst neighbouring legal professions, in Northern Ireland, the Bar Council requires (Bar Council, 2004) 12 hours annually with a mandatory requirement for those within their first 12 months of a Northern Ireland Bar Advocacy Training Course and a Northern Ireland Bar Ethics course.
- 29 In Scotland, the Faculty of Advocates maintains a list of 60 accredited providers (Faculty of Advocates, n.d.) and requires a minimum of 10 hours annually for practising members "by attendance at courses, conferences, symposia and similar events organised by training providers accredited for the purpose by the Director of Training & Education" (Faculty of Advocates, 2010, p.2) although a member may, in advance seek ad hoc accreditation of their attendance on an otherwise unaccredited course. Although the regulations define CPD in terms of such accredited courses only, subject to the Faculty Council extending the range of legitimate activities, the Faculty website refers also to "individual undertakings, such as writing books or articles, tutoring and preparing responses" (Faculty of Advocates, n.d.) Records are maintained centrally and sent to members annually for checking and certification. Waiver or extension of time is permitted (subject to a £125 administration fee). Non-compliance is reported to the Dean of Faculty.
- 30 The Bar Council of Ireland scheme requires 10 points annually obtained during the course of at least two separate activities (and up to a further 5 obtained during August or September can be carried forwards to the following year). As with the domestic scheme, there is a specific programme for first year barristers. Whilst the default position is 1 point per hour, some activities are weighted. Private study is included as are teaching, examining and committee work but, as with the domestic scheme, pure experiential learning is not. The Bar Council does not accredit training providers but legitimate CPD activity, which is self-certified, must be:

¹⁵ A suggestion that this might be mandatory was positively rejected (p. 54).

- Of significant intellectual or practical content and must deal primarily with matters related to the practice of law;
 - Conducted by persons or bodies that have suitable qualifications;
 - Relevant to a practitioner's immediate or long term needs in relation to the practitioner's professional development.
- Bar Council of Ireland, (n.d.)

- 31 Further afield, distinct approaches for barristers appear in some jurisdictions outside Europe (European approaches are discussed below). In Australia, for example, the New South Wales Bar Association demands 10 points a year, of which a minimum of 1 point of activity must be accrued in each of "Ethics and Regulation of the Profession"; "Management" "Substantive law, Practice and Procedure and Evidence; and "Advocacy, Mediation and other Barristers' Skills" (New South Wales Bar Association, 2012). Private study (to a maximum of 6 points) and small study groups are encouraged and legitimate activity includes mentoring and being mentored as well as teaching and examining. Compliance is self-certified in accordance with an "honour scheme".
- 32 In Queensland, similarly, (Bar Association of Queensland, 2004) 10 points of annual activity are required, which may be acquired by attendance at a single major regional, national or international conference (such as the IBA Annual Conference). No mandatory content is prescribed (although the Bar Association of Queensland reserves the right to do so). However, only attendance at accredited events will count for CPD purposes. As in the Faculty of Advocates scheme (the two are very similar) ad hoc accreditation may be obtained in advance. Failure to comply results in the non-issue of a practising certificate and potential disciplinary proceedings.
- 33 Where legal professions are fused, it is more difficult to detect CPD provision directed at advocacy and courtroom skills in particular. Of the USA schemes, for example, only Georgia imposes a particular requirement of 3 hours (from a total of 12) of advocacy related CLE annually on each "active member who appears as sole or lead counsel in Superior or State Court of Georgia in any contested civil or criminal case", defined as involving "evidence, civil practice and procedure, criminal practice and procedure, ethics and professionalism in litigation, or trial advocacy" (State Bar of Georgia, 2011, p. H147).

Chartered Legal Executives

- 34 The current CPD scheme of the Chartered Institute of Legal Executives is consciously conceived of as being related to the regulator's obligations to ensure individual "fitness to practise". CPD is defined as:
- The systematic maintenance, improvement and extension of the professional and legal skills, and personal qualities, necessary for the execution of professional and legal duties, and compliance with the standards required by IPS of CILEx members throughout their working life.
(CILEX, 2013, p.3)
- 35 Compliance with the scheme is compulsory for all Fellows, Legal Accounts members, Graduate Members, Associate Members and Associate Prosecutor members, consequently including those who are simultaneously studying for the substantive CILEx qualifications. There are varying hours requirements for each category (from 12 hours for Fellows and

Associate Prosecutors to 6 hours for Associates in 2013¹⁶). Chartered Legal Executive Advocates must complete 12 hours in 2013 of which at least 5 must be devoted to advocacy skills (p. 12). There is no provision for carry over of surplus hours to the following year. At least half of each member's CPD time must be recorded as relevant to their specialist area of practice and the remainder in areas "which [members] consider would be of benefit to them in their daily role. This may include non-legal work such as management training, or the development of communication skills or information technology skills" (p. 3). The scheme is essentially input-focussed although the output of some activities (such as coaching, mentoring and shadowing activities, formal qualifications obtained and the results of tests attached to the ITC updates described below) are recorded. The logbook template does not, of itself, record outputs.

- 36 Individuals are now required to submit their CPD logbooks online and provision is made for the extent of evidence of each activity of input/participation that must be provided (p. 12). Failure to submit results in suspension of the practising certificate. Such submission is treated as a declaration of compliance and false declaration is a disciplinary matter. Recognised activities include coaching and mentoring in some circumstances, work shadowing and committee work in specialist areas as well as research and writing on a legal topic (provided it is in the individual's specialist area). There is some weighting of activities generally by reference to whether it is, or is not, within the member's specialist area (so, for example, work shadowing within the specialist area may count for 100% of the CPD requirement, but outside it may count for no more than 50%). A maximum of 75% of an individual's CPD can be obtained by reading relevant articles and using updates provided specifically for that purpose by ILEX Tutorial College. These updates, at a cost of £17 each, are distance learning study materials, provided with a multiple-choice or short answer assessment and are set at or above NQF level 6 (p.5); that is, they are intended as updates to existing knowledge rather than as introductions to new areas of practice.
- 37 Provision is made that "[a]ny course taken with a training provider accredited by the Law Society or any other professional body may be used as CILEx CPD, provided the requirements of the CILEx scheme are satisfied" (p.6). In-house training by employers, provided it is signed off by a training manager or equivalent is accredited automatically. "In-house training providers are automatically approved for training their own staff, and are not required to undergo a formal listing process" (p.6). CILEx does not guarantee the performance of external training providers.
- 38 Self-employed members are required to comply with the scheme even if not providing legal services. Members working outside legal services also remain obliged to comply although they need not designate a specialist area. Retired members are exempt but there is explicitly no provision for part-time staff to comply on a pro-rata basis (p. 12) although there are dispensations for illness and related issues. There is specific and detailed provision for compliance with the scheme for overseas members and for double-counting of CPD for members who are also subject to another CPD scheme (p. 12). Failure to comply constitutes misconduct and may result in reprimand, warning or in more extreme cases, suspension from membership (p. 14).
- 39 IPS has, however, recently completed a consultation exercise (IPS, 2012a, b) on a more unusual, cyclical scheme that is considerably more unusual in the legal sector, but similar to

¹⁶ The CPD year for 2013 has been shortened and hours requirements reduced as a result.

that of the General Pharmaceutical Council. It is proposed (IPS, 2012a, b) that a cycle (reflection, planning, action, evaluation) will be used, but that, as an element of “input”, 9 entries on the CPD record will be required annually. Critical incident analysis and examples of informal learning in the workplace will be permissible as the basis for entries. At least 3 of the entries must represent “planned” activity and planning is by reference to a competency framework. The associated PDP is required to include at least one entry on ethics, and CILEX advocates must include at least 2 entries relating to advocacy. It is proposed that there should be no exemption for part-time working.

- 40 By way of comparison, the Irish Institute of Legal Executives’ CPD scheme under the aegis of the Solicitors (Continuing Professional Development) Regulations 2009, appears to be in the course of review” (IILEX, 2012.). The New Zealand Institute of Legal Executives does not appear to offer a distinct CPD scheme for its members, but contains within its code of ethics a requirement that: “Members should endeavour to maintain the highest level of legal knowledge within their chosen field and to that end gain an understanding of changes in the law or legal practice” (n.d.) and it hosts educational and update events. The scheme of the Institute of Legal Executives (Victoria) requires 10 points to be achieved annually, with provision for pro-rata-ing, double-counting, self-certification of compliance and random auditing. Since the scheme is points-based rather than hours-based, activities are weighted so that, for example, committee work rates ½ point, attendance at the AGM 1 point, pro-bono work 1 point per hour but completion of a law -based module of a designated formal qualification accrues 10 points (IILEX, n.d.).

Costs Lawyers

- 41 The CPD regulations effective from 1 January 2013 for costs lawyers are held by the Costs Lawyers Standards Board (CLSB, 2013). A costs lawyer (of whom there are c 600 in England and Wales) must complete 12 hours of CPD in a year, make a declaration of compliance (on which the practising certificate may be contingent) and keep records, which must be produced on demand from the regulator. The CLSB has power to approve CPD providers and to require CPD activity as a remedial disciplinary sanction. There is a reference, in its scheme, to a reciprocal arrangement with the Association of Costs Lawyers (“ACL”), Law Society, SRA and ILEX for mutual cross-recognition of CPD activities. A minimum of 6 of the annual 12 points must be acquired from one or more of the following activities:

- 1(a) Attending ACL National Conference
- 1(b) Attending ACL training course
- 1(c) Attending CPD approved costs conference or training (in-house or external) on costs related subject matter
- 1(d) Attending CPD approved training (in-house or external) on subject matter of relevance e.g. advocacy, area of law in which bills are drafted
- 1(e) Attending training by a CLSB Accredited Costs Lawyer
- 1(f) Delivery of training on costs by a CLSB Accredited Costs Lawyer
- 1(g) Completing CPD approved webinars
(CLSB, 2013, p.1)

Other approved activities may be taken from the following:

- 2(a) Marking of Costs Lawyer examination papers & assignments
- 2(b) Attending non CPD accredited in-house training by employer on any legal subject matter
- 2(c) Writing articles relating to costs law for the Costs Lawyer Journal or other legal publications
- 2(d) Coaching & mentoring of Trainee Costs Lawyers

- 2(e) Reading and completing ACL tutorial updates
 2(f) Reading all Costs Lawyer Journals throughout the CPD Year

This level of detailed prescription is unusual, even in the comparatively highly regulated legal profession CPD schemes as a class.

Licensed Conveyancers

- 42 The reviewed *Continuing Professional Development Code* (CLC, 2011a) for the just over 1,000 licensed conveyancers in England and Wales marks the organisation's movement towards outcomes-focussed regulation and reflects its ambitions in respect of rights to conduct litigation and advocacy. It therefore makes specific reference to principles relating to standard of work; the best interests of clients; ethics; equality and obligations to keep one's skills and knowledge up to date; to act only within one's competence and to ensure the competence of all employees of any regulated entity. Specific CPD requirements are
- 8 In each year in which you hold a **licence** you complete **Continuing Professional Development** in such courses, lectures, seminars or other programmes or other activities approved by the **CLC**.
 9. You are able to demonstrate that the subject matter of the course or activity is relevant to your professional development or area of practice and to help you deliver positive **Outcomes** to your **Clients**.
 10. Each year you inform the **CLC** - in such form as the **CLC** may from time to time prescribe - whether or not you have complied with the **CLC's** requirements for **continuing professional development** as they apply to you.
 11. You keep an up-to-date **training record**. You provide the **CLC** with this record upon its request.
 12. You attend, and pay to attend, a specific course that the **CLC** has directed you to attend (as an alternative to disciplinary action).
- (CLC, 2011a, p. 2).
- 43 The CLC's framework for CPD (CLC, 2011b), which provides for conditions being placed on the licence to practise as a sanction for failure to comply with those requirements, makes a distinction between managers and practitioners, with minima for "recognised courses" stated as:
- ...for a licensed conveyancer manager in each year in which a licence is held:
- 12 hours if they hold only a conveyancing licence
 - 16 hours if they hold a probate, litigation and/or advocacy licence in addition to a conveyancing licence ;
- for a licensed conveyancer, other than a manager, in each year in which a licence is held:
- 6 hours if they hold only a conveyancing licence
 - 8 hours if they hold a probate, litigation and/or advocacy licence in addition to a conveyancing licence.
- (CLC, 2011b, p. 6)
- 44 Recognised courses are those provided by CLC-approved CPD providers or by the CLC itself. Monitoring is by way of self-certification and monitoring (presumably by way of sample). Reading, mentoring and coaching; informal experiential learning and reciprocal arrangements are, therefore, subject to variation of its rules by the CLC, excluded.

Notaries Public

- 45 Under the Notaries (Continuing Professional Education) Regulations 2010, issued by the Master of the Faculties, CPE for the c 900 notaries other than ecclesiastical notaries, is defined as “participation in such programmes, courses or seminars accredited by the Master as may be necessary to acquire the number of credit points determined by the Master”. Six credit points in notarial practice must be achieved in each year, of which 3 must be in accredited activity. There are additional requirements for notaries practising in conveyancing and probate (6 credit points in each field of practice of which at least half are to be in accredited activity). Individual records are submitted with each request for a practising certificate and may be demanded (the registrar may also demand evidence demonstrating the accuracy of the record). To achieve accreditation, providers’ courses must have “written learning objectives” and some form of written assessment designed to demonstrate achievement of those objectives. The latter may, however, be a self-evaluation questionnaire. Non-accredited activity is legitimate only if it involves:
- Lectures and seminars;
 - Coaching and mentoring sessions (including supervision of trainees) face to face or at a distance;
 - Writing on law or practice
 - Research on law or practice leading to such outputs as forms, surveys, precedents;
 - Watching and listening
 - Work shadowing;
 - Specialist committees and working parties;
 - Studying for professional qualifications;
 - Setting, marking and moderating professional examinations

Patent Attorneys and registered Trade Mark Attorneys

- 46 The institution of a joint regulator (IPReg) for the c 600 registered trade mark attorneys and c1700 patent attorneys in the UK has resulted in a unified CPD system (which, in this context, extends beyond England and Wales). The IPReg system (IPReg, 2013) provides for members who are dual qualified as both patent attorneys and registered trade mark attorneys (the system is cumulative, not consecutive) and there are additional requirements for authorised litigators.¹⁷
- 47 A survey of CPD (IPReg, 2012c) produced, *inter alia*, a 77% response that the 16 hours requirement was “about right”. IPReg (2012a) proposes training in the professional code specifically for those moving from in-house to private practice.
- 48 By way of comparison, in Australia, the minimum is 10 hours a year, with a minimum of 15 hours for those qualified as both patent and trade mark attorneys (Professional Standards Board for Patent and Trade Marks Attorneys, 2012.) and a minimum 1 hour on ethics annually. In the domestic system, there is at present no prescription for any further required content although IPReg retains power to do so. “Personal Study” tendered for CPD must be susceptible of evidence. There is no provision for carry over of surplus credit. Reporting is by

¹⁷ Changes to provision for rights to conduct litigation and advocacy rights in both professions have now been implemented (IPReg, 2012b, d, 2013). Under the 2013 CPD scheme, higher court advocates (which includes those with rights to conduct litigation) must undertake a minimum of 5 hours higher court advocacy CPD in each of the first five years following acquisition of that status (IPReg, 2013, p.2).

annual declaration of compliance and an undertaking to submit details of activity if required to do so. Monitoring is by sampling and non-compliance may result in striking-off but there is provision for waiver, exemption for the non-practising, and extension of time for compliance. There is additional provision for those with litigation or advocacy rights (IPReg, 2013).

Solicitors

- 49 The current context for the CPD scheme for solicitors is derived from aspects of the SRA's outcomes-focussed approach to regulation, although the scheme, and in particular what was seen as the small number of hours prescribed, has been on the regulator's agenda since 2007 (SRA, 2007). Under the SRA Authorisation Rules 2011, reg. 8.2(a) "An *authorised body* must at all times have suitable arrangements in place to ensure that [...] the body and its *managers and employees, who are authorised persons, maintain the professional principles*",¹⁸ an obligation defined in the accompanying practice note as including the provision of "appropriate systems for supporting the development and training of staff" (SRA, 2012b, *our italics*). The SRA Training Regulations 2011, Part 3 (SRA, 2012a), then, define CPD as a regulatory obligation,¹⁹ imposed on all solicitors and Registered European Lawyers ("RELS"). The basic requirement is 16 hours a year, reduced pro-rata for part-time staff.²⁰ A SWOT analysis framework for CPD planning and a template record of participation are provided. Carry over is excluded and additional requirements (5 hours of advocacy CPD) are imposed, in a similar way as for legal executives, on solicitor-advocates for the first 5 years after attaining that qualification. There are also specific requirements for those in their first three years of practice (the SRA Management Course, stage 1), for RELS and those who have transferred into the profession via the Qualified Lawyers Transfer Scheme (which includes foreign lawyers and members of the bar). Responsibility for CPD completion is placed on the individual solicitor rather than his or her employer, as is responsibility for competence ("*you* maintain competence through relevant ongoing training") which is shared with the employer in the current regulatory structure. At least 25% of the requirement must be through full (not partial) attendance at accredited courses, that is: "a structured training session, delivered face-to-face or by distance learning, of one hour or more which has written aims and objectives, and is approved specifically for the purpose of compliance with *our CPD requirements*" (SRA, 2011). Structured coaching and mentoring sessions, teaching (including work on assessing and verifying NVQs), writing on law or practice, work shadowing, research resulting in a practice note, precedent or the like, writing of a dissertation, developing specialist areas by participating in committees and working groups, work towards professional qualifications²¹ and NVQs "in any business-related area" are all legitimate CPD activities. Private study per se appears to be excluded. Additional support is provided by the Law Society (Law Society, 2011). A number of requirements, including details of aims and learning outcomes, relevance, appropriate level and with appropriate methods of delivery, are set out for accreditation of course providers (SRA, 2010).

¹⁸ Which include "provide a proper standard of service to your *clients*". Some professional bodies include a commitment to self-development in such lists of core principles.

¹⁹ "CPD means continuing professional development, namely, the training requirement(s) set by *us* to ensure *solicitors* and *RELS* maintain competence;" (SRA, 2011). For some comparison of the (then) definitions of CPD in the legal sector, see Ching (2010). Some other professions adopt a more consciously developmental definition

²⁰ It is to be noted that specialist groups, such as the Association of Personal Injury Lawyers, may impose additional CPD requirements on their members.

²¹ This is not defined.

- 50 Monitoring is by self-certification on application for issue of a practising certificate although a record of activities must be retained for at least 6 years and is to be produced on demand. Those not working in legal practice, retired or working fewer than 2 hours a week are exempted from the requirement. There are explicit waivers from the monitoring requirements:
- a. *firms* and organisations with Lexcel/Investors in People accreditation have a waiver from the routine monitoring of in-house *CPD* courses and the requirements to submit details of courses, course tutors and/or discussion group leaders;
 - b. *solicitors/RELS* in *firms* and organisations with Lexcel/Investors in People accreditation have a waiver from routine monitoring of *CPD training records*, and the requirement to satisfy a minimum of 25 per cent of the *CPD* requirement by *participation* in accredited courses;
 - c. *solicitors/RELS* in *firms* holding a Legal Aid franchise have a waiver from routine monitoring of *CPD training records*;
 - d. *solicitors/RELS* in *firms* and organisations holding ISO 9000 accreditation have a waiver from routine monitoring of *CPD training records*;
 - e. *solicitors/RELS* in *firms* and organisations which are authorised in-house *CPD* providers or part of a *training contract consortium* authorised as in-house *CPD* providers may have a waiver from the requirement to satisfy 25 per cent of their *CPD* requirement by *participation* in accredited courses, if you develop a training plan which is acceptable to the *firm* or *training contract consortium*.
- 51 More recently, the SRA commissioned a detailed review, including collection of data, survey, interview and focus group data of the CPD system (Henderson et al, 2012). The objectives of the review were to identify models of good practice; address challenges to effective CPD; and to examine the role of CPD as a regulatory tool designed to maintain and enhance competence, performance and ethical conduct. Its recommendations are that the SRA should:
- Authorise independent schemes operated by employers, law societies or affinity groups;
 - Reconsider the purpose of accreditation (including the possibility of dispensing with the requirement of a proportion of accredited activity)
 - Require CPD providers to provide more detailed pre-booking information;
 - Require providers of public CPD to publish online ratings/feedback
 - Require providers to report annually to the SRA
 - Reconsider the provision that employers are not required to pay for CPD or to release time
 - Retain a minimum hours requirement, but of no more than 16 hours
 - Require documentation of a learning cycle
 - Require individuals to log all their CPD activity, not just the minimum to satisfy regulation
 - Implement an auditing process of individuals' records
 - Implement a progressive enforcement and sanctions system
 - Review the Management course stage 1 for relevance
 - Consult the profession more widely on the need for any compulsory CPD components (eg ethics).
- 52 In neighbouring jurisdictions, the Law Society of Northern Ireland applies the Solicitors Training (Continuing Professional Development) Regulations 2004. Its scheme, consciously applying the approach that "Solicitors will be expected to exercise their own judgment on what training is relevant to their practice requirements and the quality of that training" (Law

Society of Northern Ireland, 2012, p. 2) demands 15 hours in each year, of which, for those practising in Northern Ireland, a minimum of 10 hours must be in group study²² (of which 3 hours must be on client care and practice management). Up to 5 hours can be private study.²³ Those practising outside Northern Ireland may comply with the CPD scheme operating in the jurisdiction in which they are working. There is a detailed pro-rata system for part-time and locum work, illness, sabbatical and the like. The Law Society does not accredit providers. Monitoring is by return of a record card showing inputs, which is checked and may be actively verified by the Law Society.

- 53 In Scotland, a new, cyclical CPD scheme was implemented for solicitors in November 2011, (LSS, 2011b) involving self-certification, recording of planning, activities and what has been learned, an increase of minimum hours to 20 and an increase in the range of permitted activities. In contrast to those professions which encourage group work, a previous requirement to complete a minimum of 15 hours group study has been relaxed: a minimum of 15 hours must be verifiable (although online and distance learning courses no longer need be accredited) and a maximum of 5 hours may be private study. It is no longer a requirement to undertake a mandatory management element. Carry-over of points and pro-rata-ing²⁴ are excluded.
- 54 In the Republic of Ireland, the 2011 CPD scheme involves “12 hours, (to include a minimum of three hours management and professional development skills and a minimum of one hour regulatory matters)” (Law Society of Ireland, n.d.).

Allied professions

Paralegals

- 55 Some paralegals will, of course, fall under the CILEx scheme if they hold degrees of CILEx membership below that of the Chartered Legal Executive. Otherwise, the National Association of Licensed Paralegals (NALP, n.d.), demands 10 hours CPD annually for licence-holders but permits carry over in to the subsequent year. NALP permits research carried out on a file, for a client, to be counted as CPD provided it generates some kind of practice note or precedent. Beyond this, acceptable activity for NALP is a conventional list of courses and writing with specific reference to “personal or inter-personal development” activity. Post-licentiate educational activity leading to NALP fellowship also accumulates CPD credit.
- 56 The Institute of Paralegals CPD scheme, introduced in 2005, is a condition of membership for practising members and demands 12 hours (with a minimum increment of 30 minutes) each year (reduced pro-rata in relevant cases; no carry-over). Recording is required and the Institute reserves the right to inspect records. There is unusually a specific reference to level as part of the exclusionary discretion:

²² Defined as “study in a group of 3 or more people which lasts for a minimum of one hour on each occasion on which it is undertaken. Group study must be in a form which can be verified ... Group study may take place in or outside of Northern Ireland and is not required to be in groups comprised solely of solicitors” (p. 3).

²³ Which includes computer or audio-visual courses and writing.

²⁴ “The view of the Society is that solicitors in these situations have to be as competent as a solicitor working full-time.” (Law Society of Scotland, 2011, p. 7). A similar rationale is provided for imposing the CPD obligation on Scottish solicitors working outside Scotland.

Because we take your completion of your CPD obligations seriously, we reserve the right to refuse to recognise for CPD purposes any activities that breach the spirit of Paralegal CPD™ - e.g. attending a course significantly below your level of expertise (as you would have learnt little or nothing from it).
(IoP, n.d.)

Some writing, research leading to precedents/notes and teaching is approved for the purposes of CPD, otherwise, CPD is by attendance at courses. The Institute accredits courses but will also recognise courses accredited by the Law Societies of England and Wales or of Scotland; the Bar Council; the Institute of Chartered Secretaries & Administrators “or equivalent for international members or members overseas”.

- 57 The Law Society of Scotland CPD scheme for registered paralegals (and trainee-registered paralegals)²⁵ involves a minimum of 10 hours a year in a model which requires “planning, recording and justifying” of activity. Recording is online. Legitimate activity includes not only courses but also “structured coaching, online training, distance learning and private study” (Law Society of Scotland, 2011a, p. 2). There are exemptions on application, for long-term illness and for maternity/adoption leave but no reduction for part-time working. A maximum of 5 hours of the total may be private study and a minimum of 5 hours must be “verifiable”, that is:
- (i) Have educational aims and objectives relevant to your development;
 - (ii) Have clearly anticipated outcomes (e.g. what do you expect to learn from attending the course)
 - (iii) Have quality controls (e.g. you should be given the opportunity to give feedback or ask questions).
 - (iv) Be verifiable (e.g. able to be evidenced).
- (Law Society of Scotland, 2011a, p. 6)
- 58 The Scottish Paralegal Association requires 10 hours a year, of which a maximum of 4 hours can be private study. It is broad enough to encompass “[a]ny area designed to improve the individual's ability to operate properly and effectively as a paralegal” (SPA, n.d.). The SPA will not accredit or recommend courses; there is no carry over and pro rata reduction of up to 5 hours reduction is on a case-by-case basis. Sanction for non-compliance is set out carefully:
- If a member has not complied with the requirement and is not entitled to exemption, further time will be given as a first sanction and independent evidence of group study will be required to be produced to show that compliance has been achieved. Continued failure may be referred to the Committee who shall deal with the matter in such a way as they may deem fit. The Committee shall have the power to revoke the membership of the paralegal in question but only after giving the member an opportunity of being heard.
(SPA, n. d.)
- 59 The Society of Specialist Paralegals (for alumni of specialist paralegal programmes at Strathclyde and UWE) recommends 10 hours a year (5 for associate members) including face to face courses, home study of legal or management material and in-house training provided by employers (SSP, n.d.).
- 60 As an emerging profession, whose parameters and identity are still to a large extent in the course of formation in this country, the paralegal groups may necessarily have a strong focus

²⁵ Who are registered to train and practise in one or more distinct legal domains only.

on competence and CPD as a means of demonstrating competence. Madden et al (1993,) identified that emerging professions, with a status to secure, were more likely to adopt benefits models, measuring output, than the sanctions models more characteristic of the established professions. Here, however, we would suggest that, outside the CILEx umbrella, the paralegal professions, at least in England and Wales, are seeking to establish their position, should they still need to, by adopting recognisable and conventionally “legal” CPD models, with their familiar overriding focus on input and attendance at face to face courses.²⁶ In pursuit of the emerging theme of joint and multi-disciplinary frameworks, and perhaps as the logical corollary of this trend, it is worth noting that the Law Society of Upper Canada has a CPD scheme in identical terms and with identical requirements, covering both lawyers and “paralegals who provide legal services (those ... paralegals in the 100% fee paying category)” (Law Society of Upper Canada, 2010, p.4).

Administrative staff

- 61 The Institute of Legal Finance and Management (of which solicitors, barristers and accountants, non-lawyer partners and managers as well as legal cashiers may be members) qualification programmes are accredited for CPD by the Law Society (ILFM, n.d.). CPD is at least encouraged.
- 62 Members of the Institute of Legal Secretaries and PAs may apply for a CPD Certificate recognising achievement of at least 12 annual hours of CPD including courses, writing, reading and “Personal or inter-personal development training such as human relations, leadership, stress management or motivational skills” (ILSPA, n.d.).
- 63 The Institute of Barristers’ Clerks Code of Conduct (Institute of Barristers’ Clerks, n.d.) imposes a number of obligations on clerks as to the effective operation of chambers’ business but does not include a CPD requirement. Nevertheless, the Institute offers events and seminars as well as a BTEC award for junior clerks.

Related professions

Institute of Chartered Secretaries and Administrators

- 64 The Institute of Chartered Secretaries and Administrators (37,000 members) CPD mandatory scheme from 2011 demands 20 hours a year, of which a minimum of 5 hours must be “formal” (ICSA, n.d.).

Ministry of Justice regulated claims managers

- 65 Claims managers regulated by the Ministry of Justice are not required to participate in a formal CPD scheme although, if it gives advice, “A Trade Union should ensure that regular training is made available to employees, or workplace representatives who offer advice to members on pursuing a claim” (DCA, 2006, p.4). Other claims managers are required to ensure the training and competence of their staff and “comply with any rules made by the

²⁶ “As we are working towards our profession being widely recognised and respected, Paralegal CPD is a necessity” (Institute of Paralegals, n.d.).

Regulator in respect of training and competence. (There are currently no additional rules.)” (Ministry of Justice, 2007, p. 4).

OISC regulated advisors

- 66 OISC regulated advisors (including CILEx members but excluding CAB level 1 advisers, government ministers and members of designated professions holding a practising certificate) are subject to a CPD scheme over and above the incremental gradings of competence: CPD compliance does not of itself produce a change in grade and there is no carry-over. There is an emphasis on planning and selection of relevant content: We would expect advisers at the beginning of each year to review their skills and knowledge with regards to their work and business plans. They should then produce a Training and Development Plan for their CPD focusing on what they need to learn and how they might do this, for example, by attending classroom training courses, e-learning courses or even attending a conference. A Training and Development Plan form is available to download from the OISC website. We do not expect advisers to stick to this plan rigidly as long as they complete the requisite hours of CPD and courses undertaken are relevant to their business. Although advisers can choose how they undertake their CPD, the OISC may recommend specific areas they feel should be improved upon, for example, areas identified through competence assessment or a complaint investigation. Compliance with the scheme will be monitored by the CPD Co-ordinator (OISC, 2012., p. 3)
- 67 Level 1 advisers are required to complete 6 hours CPD in core knowledge and 2 in non-core knowledge annually; rising to 9 and 3 for level 2 and 12 and 4 for level 3. Core knowledge is defined as UK and EEA immigration and asylum law. Non-core may include “professional development, management skills and personal skills (such as computer skills, administration, communication). Also immigration and asylum law of other nations and other speciality knowledge required by your organisation (such as welfare benefits)” (p. 5). There is a strong policing element apparent thereafter in the OISC scheme, where non-compliance is emphasised more than once as “a breach of Code 23 of the Commissioner’s Code of Standards [which] will affect your continued regulation with the Commissioner” (p. 6, their emphasis). In some organisations the entire organisation will be deregulated if any of its advisors is found to be non-compliant. Reinstatement within 12 months after deregulation requires submission of a competence statement, making up the deficit and completing, in advance, the entire CPD requirement for the forthcoming year. Reinstatement after 12 months requires a fresh competence assessment as well as completion of the annual diet of CPD in advance. Qualifying CPD courses are accredited only if provided by OISC, through a designated Open University course, by a professional training organisation (and if core knowledge, only if accredited by the Law Society, CILEx, Bar Council and their Scottish and Northern Irish equivalents). Writing, study leave, mentoring and coaching are explicitly excluded. OISC retains the right to access individuals’ on-line CPR records for monitoring purposes. The only explicit reference to outputs appears in relation to online OISC programmes and the Open University courses, which only count for CPD if at least 70% is attained in the course quiz.

Society of Trust and Estate Practitioners

- 68 The CPD Scheme of the Society of Trust and Estate Practitioners is tied to a professional obligation to provide a competent service and designed:

1.4.1 To be relevant to the needs of Members in their professional lives and to fit within the scope of each individual member's on-going professional development programme.

1.4.2 To be flexible enough to cater for particular circumstances (e.g. a career break).

1.4.3 To be straightforward to manage and complete.
(STEP, 2007, p.1)

The minimum requirement is 35 hours a year, of which 15 must be structured. Records must be kept for 6 years. Monitoring is by way of annual self-certification and random sampling. There are detailed exemptions for those not involved full-time in trusts and estate work, non-earners, the retired and part-time workers. Whilst it is assumed that the content of CPD activity will be related to trust and estate work, "It is nevertheless appreciated that Members must often keep up to date on the related topics of law, accounting, banking and financial services. Such study can count for up to 50 per cent of the CPD requirements" (p. 3). It is acknowledged that members may also be required to participate in the CPD schemes of other organisations or firms and, although there is no express mutual recognition, provision is made for a single event to count for more than one CPD scheme. Responsibility for determining the appropriate level of complexity of an activity is placed on members. Failure to comply is met in the first instance by a requirement to make up the difference in the following year. It is expressly stated that any complaint against a member will automatically involve a review of the member's CPD records.

Will writers

69 The Institute of Professional Willwriters and Institute of Scottish Professional Willwriters' CPD joint scheme:

meets the following requirements:-

- It is relevant to the needs of Members in their field of work;
- It is flexible to cater for particular circumstances of Members;
- It does not create onerous demands on time;
- It is not administratively burdensome;
- It is not unreasonably costly.

(Institute of Professional Willwriters, 2011, p.4)

Hourages vary according to professional status with an unusual commitment to a required minimum of unstructured study; from 6 hours (4 must be structured and 2 must be unstructured or private study) for associates to 20 for full and affiliate members (12 hours must be structured and 8 hours must be unstructured or private study) (p.4). Members employed by another member may complete all their requirement by approved online provision; others can complete up to half their requirement through approved online provision. Members may devote no more than 25% of their activity to aspects of law and financial services outside the scope of wills, powers of attorney and estate administration. If a member participates in another CPD scheme, activity relevant to willwriting may be double-counted. Records and evidence are subject to inspection. Non-compliance not made up in the following year will result in suspension until the entrance criteria for the organisation are met.

70 The Society of Will Writers and Estate Planning Practitioners CPD scheme (n.d.) involves 16 mandatory structured hours a year (additional unstructured learning – reading, research,

private study - is encouraged). Up to 50% of the hourage may be composed of material relating to topics of “law, accounting and financial services” not directly related to will writing or trust and estate planning. Compliance is self-certified and there is exemption for the retired, the non-earning and those “temporarily engaged in other full-time work”.

Legitimate structured activity is defined as:

- 4.1 Attendance at conferences, seminars, workshops, regional group meetings or similar events involving active contributions.
- 4.2 Preparation of lectures or other forms of presentation.
- 4.3 Writing books, articles or reviews.
- 4.4 All learning media, provided they involve interaction with other individuals or completion of interactive printed material by an authorised provider, whether or not in conjunction with video support (including group research; listening to audio tapes, viewing tax videos and tax specific television programmes; using video discs and computer-based training packages).
- 4.5 Completion of online CPD quiz.

Compliance with another CPD scheme or in-house activity, provided it relates to will writing or trust and estate planning is permissible. Monitoring is by random checking.

Lawyers in Europe

- 71 A brief discussion of CPD schemes available to lawyers in Europe is assisted by a recent survey by the Council of the Bars and Law Societies of the European Union (CCBE, 2011) of the shape of legal CPD across its member countries. Of the 31 countries considered, 18 had a mandatory scheme (for at least one legal profession) of which in more than half measurement was in annual hours; in 5 a weighted points system was used and in 4 a similar weighted credits system. In two countries measurement was by lessons or events. The average minimum mandated obligation was 14 hours/13-14 points annually.²⁷ Some countries mandated a minimum level of compulsory content (such as non-legal matters, management, ethics etc.). Carry over of surplus credit, sometimes to a maximum extent, was allowed in most countries and reduction (for example, maternity leave) and exemption (for example, at a certain age) were available in some. Courses were recognised for CPD in all countries, and teaching, writing and language courses were recognised in some. Research, pro-bono activity, postgraduate study were recognised in most countries. In most of the countries attendance at foreign events (sometimes to a maximum) was counted. Monitoring was in the majority of countries by annual submission of individual records and in some by random sampling. Sanctions for non-compliance “vary from warning to disbarment” (p. 7). By way of example we explore a few of the more unusual or more interesting approaches from jurisdictions not neighbouring England and Wales briefly here.
- 72 Two systems operate in Belgium, one for French- and German-speaking lawyers (Ordre des Barreaux francophones et germanophones, “OBFG”, 2011, corrected 2012) and one for the Flemish-speaking (Orde van Vlaamse Bailes, “OVB”, 2004). The OBFG scheme demands 20 points a year, calculated over a three year period of which 2/3 must be on “matières juridiques” whilst the remainder may be on relevant but non-legal topics. Publication may account for 1-4 points, dependent on the importance of the article. As with many of the systems of mainland Europe, teaching is double weighted. Courses must be accredited and failure to comply is treated as breach of professional ethics. The OVM scheme requires 16 points annually with a maximum of 10 points to be gained from teaching. One point is

²⁷ In Sweden, for example, there is an annual minimum of 18 hours of structured activity. Up to a further 12 hours of structured activity can be carried over into the following year (Sveriges Advokatsamfund, 2008).

credited for writing a legal article of up to 1,000 words with a further point for each additional 1,000 words. Recognition may be given to courses provided by OBFG or other bars that are members of CCBE. Unusual provisions include 32 points allocated for completion of postgraduate diplomas and the provision that in-house courses can only be counted if made available to lawyers who are not members of that firm. A distinct recognition commission is responsible for accreditation of courses.

- 73 In France, where the minimum requirement is 20 hours annually, courses must be for a minimum of 2 hours (Conseil National des Barreaux, 2011). Providers for other than in-house courses must be previously accredited with a considerable amount of detail provided. Unusually 1 hour of teaching attracts 4 hours of CPD and writing of an article or articles on a subject connected to law, ethics or professional practice comprising 10,000 characters attracts 3 hours. Within chambers, a designated “correspondent formation” is responsible for collating and forwarding CPD records of in-house CPD activity. An anonymous evaluation questionnaire is required for each course, considering the quality of the delivery and the materials.
- 74 In Germany, both the Bundesrechtsanwaltskammer (n.d.) and Deutscher Anwaltsverein (n.d.) issue certificates of CPD participation endorsed with the organisation’s logo which can be displayed in the lawyers’ office as a form of quality mark.
- 75 In Norway, non-compliance may be met with a fine (CCBE, 2011) and those who lack more than 64 CPD hours (out of a mandatory 80- over a 5 year period) or do not pay the fine may be disbarred.
- 76 Spain is one of the few countries without a mandatory CPD scheme for its lawyers. Events and an online service are, however, available (Abogacia Espanol, 2012).

Lawyers outside Europe

- 77 CPD schemes, whilst well-established in North American and Australasia, continue to be developed in the rest of the legal world. The Malaysian Bar, for example, adopted in 2012 a mandatory scheme for advocates, solicitors and pupils of 16 points per year (and 8 points during pupillage) (Malaysian Bar, 2012). Smaller jurisdictions, where there are perhaps fewer regulators and distinct professional bodies, may find it easier to develop joint schemes for a number of professions. Larger, and federal states, may have developed national minimum standards, clearing houses or umbrella organisations for transparency and to facilitate internal transfer. We comment here on only two models from outside Europe, both of which demonstrate the trend towards a more cyclical approach in which compliance is not measured exclusively by input.
- 78 The Law Society of Alberta, very unusually, has adopted an extremely broad definition of CPD in its professional code of conduct:
- 67.1(1)... any learning activity that is:
- (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.
- (2) Continuing professional development must contain significant substantive, technical, practical or intellectual content.
- (3) It is each lawyer’s responsibility to determine whether a learning activity meets

these criteria and therefore qualifies as continuing professional development (Law Society of Alberta, n.d.)

- 79 Regulatory monitoring, then, is confined to making an annual CPD plan (which at least in the online version, includes tracking progress in accordance with the plan) and registering this with the professional body. Review and development of this scheme is part of an ongoing project based around the concept of lawyer competence (Glass, 2011). In the 2011 cycle, a 99.5% compliance rate was achieved (Billington, 2011). In 2012, with a 100% compliance rate, evaluation (Brower & Woodman, 2012)²⁸ indicated a strong degree of engagement: 91% following through on their plans and 90% spending more than 15 hours on CPD activity. Concerns and recommendations related to accountability²⁹ and more widely on linking the scheme more explicitly to public confidence and to a possible competency profile.
- 80 The New Zealand Law Society conducted a review of CPD (New Zealand Law Society 2012a) which, in October 2012, has led to draft Lawyers and Conveyancers Act (Lawyers: Ongoing Legal Education) Rules [2013] (New Zealand Law Society, 2012b) in consultation until mid-December 2012. The draft rules provide for a cyclical approach, involving recording of “a reflection on each activity” which identify what has been learned from the activity whilst retaining for lawyers in practice a minimum hourage of 10 hours a year (an excess of up to 5 can be carried forward into the following year). Organisations may apply, in what is in effect an “approved employer” model for “self-review status” under the supervision of an internally appointed continuing professional development officer. A wide range of activities is permissible and, although “private study” is excluded (as are attending meetings, committee work and pro bono activity), all lawyers are also “encouraged to complete a minimum of 50 hours of self-study each CPD year and to include them in their CPD plan as such”.
- 81 The International Union of Latin Notaries does not itself prescribe a CPD scheme but an umbrella regulation that “Notaries must particularly ensure that they keep up-to-date with professional matters, taking a personal interest in the initiatives proposed by their professional bodies” (UINL, 2004).

Standards and practices in other professions

- 82 Reference has already been made to the multi-disciplinary research carried out by the Institute of Continuing Professional Development. The Professional Associations Research Network has, similarly, conducted research comparing approaches across a variety of professions, often including some of the legal professions (see PARN, 1998-2000, 2001; Friedman et al 2001, 2004, 2005, 2009). Themes emerging from these studies are concisely set out in Friedman et al (2009, p. 34) as:
- a) Whether CPD should be voluntary or compulsory (the majority being compulsory) and whether a compulsory requirement detracts from individuals’ personal responsibility;

There is a strong set of opinions in the field that CPD should be either voluntary or obligatory. That making it compulsory will lead to a rule following or tick box approach. Certainly this has been a problem with using input measures: people scrambling to fulfil their CPD requirements by taking whatever courses or attending

²⁸ We are grateful to Paul Wood QC for kindly updating us on developments in Alberta.

²⁹ Some respondents to this survey, consistency with the SRA’s findings (Henderson et al, 2012) preferring a minimum hours standard for this reason.

whatever events are available and convenient rather than activities that will genuinely support their competence and development.
(Friedman *et al*, 2009, p.40)

- b) Level of activity expected: hourages, activities valued as higher (usually structured) or lower credit; measurement of outputs (outputs possibly arising from one or more of: responsibility shown in planning activity; evaluation of activity and reflection³⁰ on activity):

While we generally regard output measures to be superior to input, at PARN we regard points systems or a weighting system towards hours to be preferable to merely counting hours. Some hours spent on CPD are clearly more valuable than others and if the regulator is judging which hours count at all, it is better also to judge which hours should count for more than others.

Output measures can involve (in increasing levels of objectivity but also increasing cost) self assessment, self assessment with audits, third party assessment such as by examination and peer assessment in practice situations.
(Friedman *et al*, 2009, p.35)³¹

- 83 Friedman *et al* report, in work commissioned for the Financial Services Authority, on a survey of 54 organisations undertaken in 2008 (2009, p.:36) producing the following numerical results:

Inputs	hours	46%
	points	17%
Outputs	matching to competencies set by professional body	13%
	matching to competencies set by another body	4%
	matching to competencies set by members themselves	31%
	evidence of reflecting on practice	41%

- 84 It will be noticeable from earlier discussion that legal profession schemes, throughout the jurisdictions considered, have, at least until comparatively recently, tended towards the input-oriented. A general trend, however, for professions as a group (reinforced by the Institute of Continuing Professional Development findings) was found by the PARN research to be a move towards output measurement:

Regulators have in the past generally preferred input measures because they are perceived to be more straightforward to assess. However it is possible to develop standardised output forms through the use of planning frameworks and reflection templates (see Friedman & Woodhead, 2008).

(Friedman *et al*, 2009, p.40)

- 85 Particularly interesting approaches by the Nursing and Midwifery Council, and by some of the accountancy professions are discussed below. Interesting aspects include:

- accreditation of activities and providers;
- the range of positive support for CPD made available including guidelines, help with recording and advertising of CPD opportunities;
- CPD specifically designed – and apparent in a number of professional schemes - to support the organisation's ethical code:

³⁰ Reflective learning, as a concept, is not unknown in legal education in the classroom and outside it, including work with practitioners. It also appears as a desired competence for the point of qualification in the SRA's draft and in IPS' work-based learning outcomes.

³¹ See also Boud and Hager (2012, p. 28) to the effect that inputs measures "foster an orientation towards compliance with procedures that direct attention away from the nature of development itself. A false notion of continuing professional learning is embodied in the practices of those very organisations that seek to promote it".

...there are several ways to support an ethical code, two fundamental aspects of which are making it accessible to the profession and making it accessible to the public. For the profession there are a wide range of strategies that can be pursued: supplying cases of ethical dilemmas, offering training on the details of the ethical code and how it is being interpreted, making the code readily available, even having new recruits sign up to it or take an oath. For the public the key elements are transparent and easily understood phrasing, making it available on the professional body's website homepage or no more than one or two clicks away from the homepage, and making leaflets available to member's clients and the general public.

(Friedman *et al*, 2009, p.37)

- d) the challenge and potential for discrepancy arising from modern separation between representative and regulatory bodies.

86 A similar example of multi-disciplinary work including professions in Europe, North America, Africa and Asia, appears in an earlier PARN report (Friedman & Woodhead, 2008) and synthesises three profiles of CPD schemes by reference to the elements of the learning cycle which they emphasise:

- a) A reflective practitioner approach, with "A strong emphasis on the reflection and planning phases of the cycle, with less accuracy measuring at the outcome phase" (p.60);
- b) A planning for professional development value approach, where outputs are tied to competence frameworks and there is "[e]mphasis on planning with various levels at reflection and outcomes phases, generally measuring action phase by input" (p. 62).

These are described as follows:

Planning tools and competency frameworks are tools that can easily be understood by individual professionals and communicated to important stakeholders. They also can easily be adapted to different professions. It is perhaps for this reason that the planning phase of the CPD cycle is particularly well developed in terms of levels of PDV compared with reflection in particular which is regarded by some as a woolly concept. This is likely to change if new well-specified techniques or tools to support reflection are developed.

(Friedman & Woodhead, 2008, p. 71)

- c) An approach found in the medical sector in particular, with a deep outcomes-focus: "[f]ocus on measurement at the outcome phase of the cycle, minimal or no measurement of action, and varying degrees of measurement at the planning and reflection phases" (p. 65):

Many of the disadvantages of output based systems are not inherent in such systems, but are rather a reflection of the early state of development of such systems. Costs of output measurement systems are likely to fall with further developments in online software, costs of auditing are also likely to fall as standards expected become better established and more experience is gained with training of auditors. Most significantly we believe that techniques of practice appraisal are likely to improve ...

Along with improvements in the supply of output measurement techniques, we believe the demand for such systems will grow significantly as pressures on professional bodies towards providing evidence for continuing competence and maintaining professionalism grows both from professionals themselves and from other stakeholders.

(Friedman & Woodhead, 2008, p. 89)

- 87 PARN has developed the concept of a CPD scheme's "Professional Development Value" (PDV), described as follows:

If a CPD circuit (one progression through the cycle) has a large impact on the individual's professionalism, it can be said to have a high PDV. Ideally, a measurement technique will be capable of detecting the correct PDV of a CPD circuit and of particular phases of the CPD cycle. Output measures have the capability of identifying PDV, ... We must emphasise that individuals may derive high professional development value - may achieve the purposes of CPD to a high degree – without it being detected by an output measurement system. They may even achieve the purposes of CPD without following any formal CPD programme at all. However, we do regard the output measurement system as potentially leading to PDV in itself.

(Friedman & Woodhead, 2008, p. 17).

- 88 Although some of the schemes described in this chapter can easily be identified (and in some cases were identified by Friedman & Woodhead as fitting into one of these models), some equally demonstrate aspects of more than one. A simpler pragmatic taxonomy might define schemes as input-oriented; output oriented, or, where there is focus on a learning cycle of some kind as part of the learning process, cyclical. A cyclical approach could, however, be weighted towards any part of the cycle (as, for example, the planning stage or the output/impact stage).

- 89 Additional multi-disciplinary work can be found in Goodall, *et al*, 2005 and Muijs & Lindsay, 2008. The question of evaluation of CPD activity has, potentially two aspects: the quality of relevance and delivery of structured formal activity and, where output is relevant, the individual's assessment of what he or she has learned (the impact of CPD). Considering the impact of CPD, Goodall *et al* make a useful distinction, in an empirical study of schoolteachers, between meaningful evaluation of what has been learned, and the kind of dissemination of material familiar to those who have passed on the notes to colleagues in a law firm:

...while many feel that the evaluation of the impact of CPD is important, this evaluation often does not happen due to constraints of time (on CPD leaders as well as other members of staff), and lack of resources (in terms of joint time, structures for peer observation, etc.). While time is often made for *dissemination* of learning through CPD, the process often stops there, with no further investigation as to the effect of that learning.

(Goodall *et al*, 2005, p.124)

An innovative approach to measurement of output is demonstrated in the RIBA scheme, described below. Fundamentally, however, it is because the legal CPD schemes, taken as a group and across a variety of jurisdictions, tend towards a very similar model, that some discussion of the variety of differing approaches taken by other professions is useful.

Medicine

- 90 All discussion of CPD in the medical sector must now take into account the regulatory move towards a periodic revalidation process perceived as a more in depth assessment of professional competence than CPD alone (Department of Health 2007, 2008a and b; 2011; Health Professions Council 2008) as a condition of continuing licensure to practise. An

overview of progress is provided by the Council for Healthcare Regulatory Excellence³² (CHRE, 2012) and another view is found in an early multi-disciplinary conclusion:

A CPD record dependant on accumulating hours or points based on course attendance, does not meet the basic requirements of revalidation (UK Interprofessional Group,³³ n.d., p. 2)

General Dental Council

- 91 Dentists and dental care professionals are governed by the General Dental Council, which provides separate CPD schemes for each. Dentists (GDC, n.d.) are required to complete at least 250 hours over a five year period, of which a minimum of 75 must be “verifiable” (with concise educational aims and objectives, clear anticipated outcomes, quality controls and documentary proof [of participation, not of output]). Activity carried out in another country under the aegis of another dental regulator may be counted. It is suggested, but not required, that in each cycle, the individual keeps up to date on legal and ethical issues and on dealing with complaints and devotes 10 hours to medical emergencies; 5 to disinfection and decontamination and 5 to radiography and radiation protection).
- 92 The equivalent scheme for ancillary staff (GDC, n.d.) follows the same model, including the same suggestion about the number of hours in each cycle to be devoted to core subjects. The overall requirement is, however, reduced to 150 hours over the five year cycle, of which 50 must be verifiable.
- 93 Reporting is annual, either on a form or through an online log. At the end of a cycle an individual may be asked to submit proof of the verifiable activity and a log of hours. Presumably the length of the cycle reduces the strain of the audit process for the monitoring regulator. It also automatically provides, as many CPD programmes do not, for carry over from year to year
- 94 As with other medical sectors, the General Dental Council is reviewing its CPD requirements in the context of an overall move towards a revalidation process (Eaton et al, 2011; Pinto and Robinson, 2012; GDC, 2012a, b, c, d). A CPD discussion document comments that “dentists are more likely to undertake CPD based on reflection on their skills and abilities than other registrant groups” and explores a move towards a more outputs focussed approach (GDC, 2012c). The GDC is, at the time of writing, consulting on a cyclical approach which would, nevertheless, maintain a minimum hourage (100 hours for dentists) which consciously includes reflection and which will be incorporated into the 5 yearly revalidation cycle. The revalidation exercise (from 2014) will include assessment around four topics: clinical, communication, professionalism and management and leadership (GDC, 2010). At least once in each cycle, an individual’s evidence must be checked by an approved external verifier. The stages of review will include:

Stage 1 – compliance check, which will apply to all dentists

Stage 2 – remediation phase, which will provide an opportunity to dentists who do not pass Stage 1 to remedy deficiencies

³² To become the Professional Standards Authority for Health and Social Care by the end of 2012.

³³ The Law Society/SRA is listed as a member of this group. In other sectors there is some evidence of “revalidation” being used as a synonym for declaration of CPD activity (see, for example, NRCPD, n.d.)

Stage 3 – in-depth assessment, which will apply to dentists who fail to demonstrate their compliance at the end of the remediation phase

General Medical Council

95 The GMC has recently altered its CPD approach following a review of the regulation of medical education and training (the “Patel Report”: GMC, 2010) and subsequent examination of CPD in particular (Schostak, *et al* 2010; Murgatroyd, 2011; CPD Review Working Group, 2011; GMC 2010, 2011, 2012 a, b, c). Medical CPD is now a component part of the periodic revalidation of the licence to practise in the context of a profession with “both a culture of CPD participation and an infrastructure to support it” (CPD Review Working Group, 2011, p. 9).

96 Significant features of the outputs focussed scheme³⁴ are:

- A positive refusal to prescribe input hourages or mandatory activities/content outside the broad topics of the revalidation framework;³⁵
This guidance does not tell you what CPD, or how much CPD, is right for you. You will need to judge how best to apply the principles of this guidance to your own practice and professional development.
(GMC, 2012a, p. 5)
- A definition of CPD which permits informal experiential learning in the workplace – “any learning outside of undergraduate education or postgraduate training that helps you maintain and improve your performance” - to “count” for CPD purposes (ibid, p.7);³⁶
- Requirements that practitioners take responsibility for a cycle involving individual identification of needs and CPD planning but also demanding that practitioners reflect on what you have learnt from your CPD activities and record whether your CPD has had any impact (or is expected to have any impact) on your performance and practice. This will help you assess whether your learning is adding value to the care of your patients and improving the services in which you work (ibid, p.11);³⁷
- A recording system including PDPs. The revalidation process (GMS, 2012b), then, explores through evidence and appraisal, four domain with their sub-attributes:

Domain	Attributes
Knowledge, skills and performance	Maintain your professional performance Apply knowledge and experience to practice Ensure that all documentation (including clinical records) formally recording your work is clear, accurate and legible
Safety and Quality	Contribute to and comply with systems to

³⁴ That said, the European Accreditation Council for Continuing Medical Education has a mandate to act as a clearinghouse for recognition of credits in continuing medical education across Europe.

³⁵ Although CPD schemes of individual royal colleges or faculties may prescribe hourages. A discussion of the role of private study in medical practice appears in Asbjørn Holm, 2000.

³⁶ “...for most doctors the most effective CPD is the sort of experiential learning that occurs naturally in the workplace, almost as a by-product of practice, rather than through activities formally designated as CPD. Inevitably this ‘informal’ CPD activity is hard to measure and resistant to providing the sort of assurances a regulator might seek” CPD Review Working Group, 2011, p..13

³⁷ Indeed, the Academy of Medical Royal Colleges has agreed a template for recording reflection (AoMRC, n.d.).

	protect patients Respond to risks to safety Protect patients and colleagues from any risk posed by your health
Communication, partnership and teamwork	Communicate effectively Work constructively with colleagues and delegate effectively Establish and maintain partnerships with patients
Maintaining trust	Show respect for patients Treat patients and colleagues fairly and without discrimination Act with honesty and integrity

General Pharmaceutical Council

- 97 The approach of the General Pharmaceutical Council pursuant to The General Pharmaceutical Council (Continuing Professional Development and Consequential Amendments) Rules Order of Council 2011 (SI 2001/1367) has a strong basis in reflection (see Friedman & Woodhead's first model described above, 2008). Pharmacists and pharmacy technicians must make a minimum of 9 CPD entries each year, in a prescribed format showing the cycle of reflection, planning, action and evaluation (GPC, 2010 and 2011).³⁸ As with the ICAEW scheme below, "reflect" is used to describe initial identification of learning needs rather than impact on practice or improved competence). Monitoring is by initial self-certification but an individual can expect to have to submit his or her record every 5 years or more frequently if remedial action has been prescribed (e.g. by the Fitness to Practise Committee) or there is concern about compliance. On review, records dating back for 5 years are examined.
- 98 The General Pharmaceutical Council's approach to revalidation is, at the time of writing, in discussion with a view to implementation in 2015, although draft principles and a draft definition ("The process by which assurance of continuing fitness to practise of registrants is provided and in a way which is aimed primarily at supporting and enhancing professional practice") have been established (GPC, 2012).

Health and Care Professions Council

- 99 The work of what is now the Health and Care Professions Council (previously the Health Professions Council) provides a helpful example of the thought process involved in work seeking to establish a single CPD system for a wide range of professions (16 professions, now including social workers as a result of the Health and Social Care Act 2012). Brook (2005) reports on a substantial consultation exercise carried out in 2004 throughout the UK as a precursor to the Council's establishment of the CPD scheme required by art 19 of the Health

³⁸ The latter is unusual, many of the organisations requiring evidence of a cyclical approach do not prescribe the format. Here, however, the template forces individuals to address the cycle in full and at least three out of the required nine entries must start at "reflection".

Professions Order 2001 (SI 2002/254).³⁹ A particular challenge in this exercise was the creation of a scheme flexible enough to suit a wide variety of professions and to accommodate individuals' compliance with existing local or national CPD schemes. Consequently, perhaps, a very wide range of activity is included beyond formal courses, as for example: "work-based learning, for example, reflective practice, clinical audit, significant event analysis, user feedback, membership of a committee, journal club; professional activity, for example, member of specialist interest group, mentoring, teaching, expert witness,⁴⁰ presentation at conferences; [...] public service" (Brook, 2005, p. 9). It is fair to say that some respondents suggested that some of these activities were inherently difficult to define or were subjective and that some, such as membership of a specialist group, inherently passive. A rating system, weighting some activities more highly than others, was rejected: "[t]he variation of CPD activities reflects differences between the professions and the work of individual registrants. Introducing a rating system would wipe out this important benefit and need CPD standards to be set for each profession, and for individual circumstances within each profession" (p. 10). Equally, the prescription of a minimum number of hours was rejected in favour of an output-focussed approach intended to recognise on-going learning and development.⁴¹

100 Monitoring by sample was proposed, and advice was taken as to the extent of a statistically valid sample (samples from each of the professions, 5% in the first year and 2.5% thereafter: p. 16).⁴² The current CPD scheme (Health Professions Council, 2011a, 2012) now representing 16 professions explicitly (but somewhat confusingly, as experiential learning in the workplace has already been defined as CPD activity), dissociates CPD compliance from fitness to practise:

There is no automatic link between your CPD and your competence. This is because it would be possible (although unlikely) for a competent professional not to undertake any CPD and yet still meet our standards for their skills and knowledge. Equally, it would be possible for a registrant who was not competent to complete a lot of CPD activities but still not be fit to practise.

We have a separate process (our fitness to practise procedures) for dealing with lack of competence, and this is not linked to our powers to make sure registrants undertake CPD. ...

However, for individual professionals, there is likely to be a link between competence and CPD. When considering your CPD, and planning your CPD activities, you may consider your on-going competence as important for your CPD. But you can be sure that we do not assess your competence, or make assumptions about your fitness to practise, based on your CPD activities.

(Health Professions Council, 2011a pp. 4-5)

³⁹ The legislation prevents the Council organising or approving CPD activity itself. Its current statement (Health and Care Professions Council, 2011a, p.10) goes further: "We are not going to 'approve' certain CPD activities because we believe that you are in the best position to decide what type of CPD activity is most relevant to you. If we approve only certain CPD activities, you might not be able to complete other activities which could benefit your work and service users more".

⁴⁰ It is apparent from the scheme as currently operating that being an expert witness remains a valid CPD activity (Health Professions Council, 2011a, p.9).

⁴¹ A group of health care professions, including many of those now serviced by the Health and Care Professions Council nevertheless subscribe to a Joint Statement on CPD (Royal College of Nursing *et al*, 2007, p. 3) which, apparently targeted at employers, sets out an expectation of "Six days (45 hours) per year protected CPD time [including documentation of outcomes] should be the minimum time granted to support health and social care practitioners' CPD, above existing statutory and mandatory training and formal study leave arrangements. This is a realistic amount of time, and is in keeping with existing regulatory and professional body requirements".

⁴² Few organisations stipulate so precisely. The Institute of Risk Management 9a, b, however, audits 15% of its membership annually.

- 101 Maintaining the position that a minimum number of hours is not prescribed, this CPD scheme takes an alternative approach based on a series of standards (an example of Friedman & Woodhead's planning focussed model):
A registrant must:
1. maintain a continuous, up-to-date and accurate record of their CPD activities;
 2. demonstrate that their CPD activities are a mixture of learning activities relevant to current or future practice;
 3. seek to ensure that their CPD has contributed to the quality of their practice and service delivery;
 4. seek to ensure that their CPD benefits the service user; and
 5. upon request, present a written profile (which must be their own work and supported by evidence) explaining how they have met the standards for CPD.
- (Health Professions Council, 2011a p. 6)
- 102 Audit remains an important part of the scheme, and is carried out each time one of the regulated professions renews its registration. However only those of more than 2 years registration can be selected for audit: "We have made this decision because, although we believe that all registrants should undertake CPD throughout their careers, we also believe that registrants should be allowed at least two years on the Register to build up evidence of their CPD activities before they are audited." (p. 13). This audit, necessarily, given the nature of the scheme, provides assessment criteria against the standards with instructions for completion of the CPD profile and involves trained CPD assessors as well as detailed provisions for further and better particulars, deferral of audit (for e.g. parental leave) appeal and application for reinstatement. The Council is in the process of detailed investigations (including into the level of risk posed by the practice of its registrants and the utility for this purpose of its existing systems) (Health and Care Professions Council, 2011b, 2012a; Burford *et al*, 2012).

Nursing and Midwifery Council

- 103 The strategy of the Nursing and Midwifery Council was expressed to a PARN study (Friedman *et al* 2009, p. 35) as:

There is a misunderstanding with nurses and midwives in that they expect their employers to provide funding for CPD and they think they have to go on courses, and we deliberately set out not to do that because you can go on a course but you might not learn anything from it, or put the learning into practice. What we want people to do is to learn from good practice, introduce it and evaluate... we wanted people to examine their specific area of practice.

Consequently the post-registration education and practice ("PREP") standards for registered nurses and midwives require members to:

- undertake at least 35 hours of learning activity relevant to your practice during the three years prior to your renewal of registration;
 - maintain a personal professional profile of your learning activity;
 - comply with any request from the NMC to audit how you have met these requirements.
- (NMC, 2011, p.8)

A template for the required profile documenting both activity and outcomes is provided under the following headings (p. 9):

A list and a description of your work place or organisation and role for the last three years;

The nature of the learning activity – what did you do?
 Description of the learning activity – what did it consist of?
 Outcome of the learning activity – how did the learning relate to your work?

Monitoring is by way of self-certification of compliance on renewal of registration (every three years) and through audit by sample.

- 104 The NMC approach to revalidation will involve replacing the current PREP standard by 2015. Although consultation was anticipated by late 2012 it does not appear to have been initiated at the time of writing.

Royal College of Psychiatrists

- 105 This professional body was described as unique amongst those studied by Friedman & Woodhead (2008) in having a CPD scheme driven by peer assessment (for a survey of psychiatrists' CPD activity, see Bamrah *et al*, 2011). A minimum number of hours (50) is also prescribed (supplemented by a suggested 100 additional hours of reading) and activity is divided into Clinical, Academic and Professional (Royal College of Psychiatrists, 2010). The Royal College has the responsibility of setting the standards for revalidation of psychiatrists and has recommended that the format of the appraisals be "a minimum of ten case-based discussions be undertaken over a 5-year period (two discussions per year)." (Royal College of Psychiatrists, 2012: 11).

Accountancy

Undertaking CPD does not, by itself, guarantee that all professional accountants will provide high quality professional service at all times. The latter requires ethical behaviour, professional judgment, an objective attitude, and an appropriate level of supervision. Further, not every professional accountant who participates in a CPD program will obtain the full benefits of that program. This will depend on the professional accountant's commitment and capacity to learn. However, CPD plays an important part in enabling professional accountants to develop and maintain professional competence that is relevant to their role. Therefore, despite some inherent limitations, CPD is an important element in maintaining public confidence and trust.

(International Education Accountancy Standards Board, 2012, p. 7).

- 106 At an international level, accountancy professional bodies which are members of the International Federation of Accountants, are, since 2006, required to have a CPD scheme consistent with IFAC's International Education Standard for Professional Accountants 7 *Continuing Professional Development: A Program of Lifelong Learning and Continuing Development of Professional Competence* (IES 7). It should be noted that the research carried out by Friedman & Woodhead (2008) cited above was commissioned by the International Accounting Education Standards Board.
- 107 IES 7 has recently been redrafted or clarity in drafting and consistency with overall educational standard. The reviewed IES 7I will become effective in January 2014 (International Accounting Education Standards Board, 2012, p. 3). Professional bodies are, however, permitted to implement an output based, input-based or a combination CPD scheme.⁴³ Output-based models must require demonstration of maintenance or

⁴³ "For example, member bodies may choose to:

development of competence with “sufficient and reliable evidence that has been objectively verified by a competent source, and measured using a valid competence assessment method” (p. 9). Input schemes must require at least 120 hours (or its equivalent) in a three year period, of which at least 20 hours must be completed annually and of which 60 hours must be verifiable. Monitoring must be systematic and provide for sanctions for failure to “report on or to develop and maintain competence” (p. 10). As will be seen, the trend amongst domestic accountancy bodies at present is for a self-directed output model. No doubt discussion will be needed to establish whether existing models, many of which are at least cyclical and to some extent output-oriented, are able to comply with the standard and burden of proof demanded. Friedman & Woodhead, for instance, refer to a strongly output-focussed German professional organisation of accountants (2008, p. 44) where, at the time of their research, “the organisation carries out practice audits, which involve checking on the extent that CPD requirements are met. During these audits, CPD records are not checked, but the quality of work at the practice is. If a deficiency is found, there is further investigation, which involves interviewing practitioners to gauge their professional knowledge and looking through invoices and attendance sheets.”

Institute and Faculty of Actuaries

- 109 The actuarial profession (the Institute for England and Wales and Faculty for Scotland) identified as one of its priorities for 2011/2012, “developing proposals for an outcomes-based CPD scheme to succeed the current inputs-based system” (Institute and Faculty of Actuaries, 2011, p.13). Nevertheless, the scheme for 2012/2013 (Institute and Faculty of Actuaries, 2012) prescribed hourages (distinguishing between members with practising certificates and those without). For those with practising certificates, annual requirements are 30 hours of verifiable activity, of which a minimum of 20 (of which 10 must be by attendance at external events) must relate to technical aspects and a minimum of 6 to professionalism. Up to 15 hours may be claimed for “service to the profession” (volunteering for the benefit of the profession is a distinct part of the profession’s ethos). Those with practising certificates may also be required to attend designated “professionalism events”.
- 110 Only those without practising certificates, whose hourages are lower, are permitted to count private study (and must identify the learning outcomes from such study). Members working overseas may comply with the CPD scheme operated by the professional body for that country. Failure to comply on time is met by an extension and an administration fee of £50. Failure to comply by the expiry of the deadline incurs, at the election of the defaulting member, either a fine of £750 and public identification as a non-complier or referral as a disciplinary matter. Failure to comply more than once in a 10-year period is automatically a disciplinary matter.

Association of Accounting Technicians

- 111 Licensed and registered members are explicitly required to assess their CPD needs in practice management and, if a registered member in practice to submit evidence of practical experience and/or CPD in this area as a condition of applying for a licence and on renewal of

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- a. use the principles of both input- and output-based systems, whereby input-based learning units contribute to the output competences being measured for a portion of the knowledge areas in a predominantly output-based system;
 - b. allow professional accountants who may not meet the input-based learning units requirement to provide verification that competence has been developed and maintained; or
 - c. specify a certain number of learning units as an indication of likely effort required to achieve competence, and monitor this together with verifying the competence achieved as a result of the learning activities.” (p. 12)

registration (AAT, n.d.). Members in practice are required to go through a CPD cycle, rather than to record hours, at least twice in a 12 month period and to retain records which are subject to monitoring (AAT, n.d.).

Association of International Accountants

- 112 The 1647 UK and Republic of Ireland members (FRC, 2011, p. 8) of this body with a distinct international focus, are subject to a CPD scheme which, as with others in this sector, is designed to be consistent with the over-arching CPD requirements of the IAESB International Education Standard 7s for Professional Accountants. 120 units are required in each rolling 3 year period, of which 20 units of verifiable activity must be completed in each year.

Chartered Institute of Internal Auditors

- 113 The professional commitment of the IIA is consciously aspirational, setting a level beyond maintenance of a minimum level of negligence-avoiding competence with the objective of *raising* standards of practice:

All members of the IIA, as signatories to the Code of Ethics and the International Standards for the Professional Practice of Internal Auditing, are expected to “continually improve” and to “enhance their knowledge, skills and other competencies through continuing professional development”.
(IIA, 2011, p.2)

Responsibility for CPD is explicitly placed on the individual and the principles of the scheme include the following:

2.6 As wide and diverse a range of activities as possible shall be recognised as contributing to CPD provided they are relevant, measurable and, where possible, verifiable

2.7 There shall be minimal administrative requirements placed on members in meeting the expectations of the Institute’s CPD policy

2.8 There shall be no unnecessary duplication of effort where existing and alternative processes satisfy the same requirements for CPD

2.9 The Institute shall provide clear guidance on CPD, actively promote professional development and facilitate it through the provision of meaningful activity

2.10 The means of determining that members are engaging in the appropriate level and volume of activity to support their CPD shall be focused on the impact that it has on their performance and effectiveness rather than the number of hours or credits accumulated.

(p.3).

- 114 Individuals must identify needs, “define a minimum of one target for the desired outcome of professional development in terms of improvements to personal performance” (p. 4), create a plan, engage in suitable activity, monitor progress against the plan and review the impact of activity on personal performance. Self-certification is annual and records must be kept for 3 years. Monitoring is by random sample. Exemptions are available and compliance with the CPD scheme of another professional body (provided that it involves the same cyclical approach, recording output) is permitted as an alternative. Those who fail to comply “will be positively supported and encouraged but ultimately may be referred to the disciplinary committee for review” (p. 6).

Chartered Institute of Management Accountants

115 The 69, 038 (FRC, 2011, p. 8) UK and Republic of Ireland members are required to comply with the CPD policy described in an earlier iteration by Friedman & Woodhead as output based (2008, p. 26) as a condition of registration. No minimum hours or points are required and work-based (experiential) learning is included: “Members are responsible for assessing their development goals, selecting activities, and designing their CPD programmes” (CIMA, n.d). Records must be kept for 3 years and monitoring is by annual random sample. An accredited employer scheme is available. Members are expected to be able to demonstrate all aspects of a learning cycle:

Step 1: Define what is expected of you in your role, and future goals. Draw up brief descriptions of these roles and expectations.

Step 2: Assess your development needs and outcomes. Compare what is expected of you in your current, or a future role, against your current capabilities.

Step 3: Design your programme around activities you believe are relevant to your role. Document these activities.

Step 4: Act. Undertake the development activities planned in Step 3.

Step 5: Reflect on your development activities, consider what you learned, how you can apply your learning and changes you would make next time.

Step 6: Evaluate your actual development against your development needs and outcomes. Any outstanding development can be carried over into the next cycle.

(CIMA, n.d)⁴⁴

CIMA provides a substantial range of events and written materials and endorses a range of formal activity, including MSc and MBA programmes.

Chartered Institute of Public Finance and Accountancy

116 The CPD scheme for the 13,159 UK and Republic of Ireland members (FRC, 2011, p. 8) is “designed to be as flexible as possible and takes into account the various sectors CIPFA members work in particularly as nowadays many members work outside of mainstream accountancy and audit roles. It is especially important, in this time precious era, that all development should be relevant to your job role now and for your possible future career” (CIPFA, 2010, p.:1). Minimum participation is 120 hours in a three year period, of which at least 20 hours in each year must be “verifiable”.

117 Unusually, there are two levels of participation, and individuals may switch between the two. Level 1 is targeted at meeting the regulator’s minimum requirements and demands a log of activity together with a portfolio of evidence (evidence may range from simple proof of attendance to results of an assessment or appraisal). Level 2, however, is described as “the best practice scheme” (p. 2) and demands the full cycle of “planning, recording and reflecting on development”. Participants at level 2 are asked to add to their portfolio of evidence their “reflective comments about the usefulness of the activity, what you have learned, how you will use the acquired knowledge or skill in the future and how far it has met your objectives”.

118 All participants are invited to participate in “technical development” activity as well as leadership and management development. Structured activities include mentoring and being mentored, secondment, project work and “developing new systems or processes” in addition to the conventional course attendance. Unstructured activity includes, unusually, the application into practice of learning derived from a course as well as work shadowing,

⁴⁴ This emphasis may be as a result of Friedman & Woodhead’s evaluation (2008, p.27), where the planning and reflection phases were assigned a professional development value of 4, but the results phase only 2-3 as “Results are considered during reflection, but there is no formal recording, structure, or assessment system specifically for this phase”.

reading, on the job learning (i.e. experiential learning) and “visiting other departments or organisations” (p.5). There is provision for exemption for those who are retired or on leave (although special consideration is given to returners as requiring particular support in refreshing themselves on return to work) and monitoring is by annual declaration and random sampling. Employer staff development schemes may be accredited.

Chartered Institute of Taxation/ Association of Taxation Technicians

- 119 Unusually in the accountancy sector, the joint CPD scheme of these two organisations prescribes a minimum number of hours for those “working in taxation”; and at a high level. CIOT members must complete “a minimum of 90 hours of CPD per calendar year of which not more than 70 hours each year should be reading” and ATT members 45 hours, of which not more than 30 may be reading (ATT/CIOT, 2011, p.3). Totals can be averaged out over a 3-year period so there is some element of carry over and “[t]raining in law, accounting and financial services, practice management and administration, staff development and IT may be included up to a maximum of one quarter of the total annual CPD requirement” (p.3). As for some of the other accountancy professions, temporary suspension for leave is treated not only as an exemption but also as a trigger for refreshment on return: “the overriding requirement to ensure that their tax knowledge is up to date on returning to work” (p.4). Records must be kept for 3 years and monitoring is by random checking. Checking of CPD records is a mandatory aspect of any disciplinary proceedings.

Institute of Chartered Accountants of England and Wales

- 120 No minimum hourage or points system is imposed (ICAEW, n.d. a, b) for the UK and Republic of Ireland members of the Institute (FRC, 2011, p. 8) although an annual declaration of compliance is required.⁴⁵ The rationale for movement towards this model is justified as:

You are the best judge of how much CPD you need to do and which activities will be most beneficial in meeting your learning and development needs. CPD should be proportionate and relevant to your role; there is no need to keep up to date with areas of accountancy which are not directly relevant to your role. ... There is no requirement to achieve a certain number of hours or points, and the notion of structured and unstructured activities no longer exists. There is no requirement to attend a certain number of courses or seminars. There may be periods when, having reflected, you quite reasonably conclude that you already have all the current skills and knowledge necessary for your work and that you do not need to undertake any further CPD activity at that moment.

(ICAEW n.d., a)

Monitoring is by random sample requesting evidence of CPD reflecting three stages of a cycle: “reflect, act, impact” where “reflect” represents the planning stage and “impact” the assessment of “the effectiveness of [the] activities (how the learning has made you more competent and effective, what you can do now which you couldn’t do before) and consider whether your learning and development objectives have been met”.

Other approaches

⁴⁵ Total number of members at time of writing: 117,475. The size of the profession will be of interest to those involved with the largest legal professions.

- 121 A selection of other professional bodies have been identified as having particular insight into aspects of CPD, or as taking unusual or innovative approaches.

Chartered Institute of Personnel and Development

- 122 The Chartered Institute of Personnel and Development has adopted an output-oriented model (CIPD, 2012 with a strong emphasis on reflective learning.⁴⁶ The recommended planning stage involves review of learning over the previous 12 months and setting objectives for the forthcoming year. Presentation of learning is fluid and would accommodate a narrative, learning journal approach:

We don't provide rigid templates or lay down restrictive rules, either for planning or recording your development activity. So as long as you clearly identify the professional value of the things you've learned, you can do whatever suits you. We also don't believe that you can measure personal development by counting training hours or the number of courses attended.

What counts towards CPD?

Some people find it helpful to write things down in detail, while others record 'insights and learning points' in their diaries as they go along. The thing to remember is that records and logs are only tools for planning and reflection. CPD is what you experience, learn and then apply.

Anything that helps you to meet your development objectives could count as CPD – as long as you can demonstrate real value to you in your work. So, if you do something at the weekend that changes your perspective on teamwork or teaches you something about interpersonal communication, you can use it in your CPD record. Similarly, if there are personal learning experiences you don't want to share, leave them out. You decide what goes in and what stays out.
(CIPD 2012, p.3)

Chartered Institute of Public Relations

- 123 This scheme, which, as with the actuarial profession, has a strong emphasis on volunteering and pro bono work, has an annual requirement of 60 hours where it is mandatory. Members can attain "accredited practitioner" status after accumulating 2 years of CPD activity and retain that status as long as CPD is continued.
- 124 There are two streams of activity: "Developing your communication skills and knowledge" (the number of required points varies by status but the maximum is 40), and "Voluntary work, research and supporting others". This latter category includes networking, teaching and supporting others, unstructured and self-directed learning (including work shadowing and specific projects), and contribution to the development of the profession, including committee work and pro-bono activity (CIPR, n.d.).

Construction Industry Council

- 125 Friedman & Woodhead (2008) comment that the CIC is obliged to manage, carefully, a certain degree of resistance to anything other than an input-based CPD scheme. The

⁴⁶ "Within a very short time, reflection becomes a routine part of working life that is more or less instinctive. If you see learning as an intrinsic part of your job, you do it as an intrinsic part of your job. People who routinely plan, record and reflect on their learning tend to see more opportunities for personal development. The fact is the world becomes a richer, more stimulating place when you embrace reflective learning, because you switch on a kind of intuitive radar that's tuned to pick up useful opportunities" (CIPD, 2012, p 4.).

domestic scheme falls within the framework of the European Project for the Use of Standards of Competence in CPD for Construction Industry Practitioners, which reinforces the cyclical nature and outputs based of the scheme:

a CPD system should allow individuals to:

- review and explore their professional and personal careers/competences;
- discover and set down their individual strengths and weaknesses;
- make and use a development plan; and
- record their intentions and provide verification that they have conformed to their plans and achieved their targets.

(CIC, n.d., p. 14).

- 126 The domestic CIC “User’s Guide Application”, whilst consistent with this model, provides considerably more detailed operational instruction about the underlying learning cycle than many others: clarify aims; identify professional CPD requirements; find sources of help, select appropriate Occupational Standard; appraise your personal situation; identify competence needs and goals; plan CPD; implement CPD, record CPD, monitor and review (p. 18).

An alternate version (p. 19) operates by way of self-appraisal but maintains a cyclical structure: clarify personal aims; manage the appraisal; review personal experience; assess your own competences; assess what helps and hinders your development; review self-appraisal process. It is suggested that, given the nature of the industry, the construction project itself might be used as a vehicle for CPD and development of competence:

This might provide a number of benefits:

- ensuring better structured training for new entrants;
- helping with recruitment and retention;
- demonstrating the importance of training in improving business performance;
- encouraging a ‘learning and feedback’ culture in the industry;
- encouraging cross disciplinary learning and development of team working skills;
- potential for CPD and or competence to be a requirement in procurement processes and contracts; and
- aiding identification of where competence needs improving through CPD.

(p. 26)

Engineering Council

- 127 The Engineering Council code is an example of an approach designed to accommodate a variety of professions (see also the Health and Care Professions Council, International Accounting Education Standards Board and Construction Industry Council). Rather than prescribe in detail the parameters of acceptable CPD schemes,⁴⁷ however, the approach is to prescribe a range of standards of professional development that should be attained by use of the relevant discipline’s discrete CPD scheme and a professional code for individuals. There are three pillars to these standards: “Demonstrate commitment to maintaining professional competence through self managed PD”; “Take responsibility for and manage PD” and “Support the learning and development of others” (Engineering Council, 2010a, b). No hourages are prescribed.

⁴⁷ Guidance for the professional engineering institutions includes, however, the cyclical “PD should be guided by a development action plan and recorded in a professional development record. There is an obligation placed through the PD code on individuals to plan and record their PD, to produce evidence of PD achievement and to support the learning of others.” (Engineering Council, 2010).

Royal Institution of British Architects

- 128 As do many regulators or professional bodies with a regulatory role, the Architects' Regulation Board demands, in its Architects' Code, that architects "are expected to keep your knowledge and skills relevant to your professional work up to date and be aware of the content of any guidelines issued by the Board from time to time" (2010). In implementing this requirement, the RIBA scheme seeks to combine both input and individual measurement of output without necessarily prescribing a cycle. RIBA does not accredit or assess learning itself although there is an approved network of CPD providers and a specific selection of courses for more senior practitioners. Individuals must:
- Do at least 35 hours of CPD each year
 - Of these, 20 hours must be gained from our RIBA CPD Core Curriculum syllabus
 - You can get the other 15 hours from relevant subjects of your choice
 - You must give at least 100 learning points to the CPD you carry out
 - You must gain at least half your CPD from structured learning, where possible
 - You must record your CPD online using the CPD recording manager
 - You must plan your CPD as much as possible.
- (RIBA, 2011.)
- 129 The core curriculum involves 10 topics, on each of which at least two hours should be spent each year. In addition to the measurement of hours spent, the "learning points" system requires individuals to allocate up to 4 points to each activity, as follows:
- One point – you learned little.
 Two points – your knowledge has increased in a general way.
 Three points – you have increased your knowledge of a subject in a detailed way.
 Four points – the activity significantly benefited you in terms of knowledge and skills and you are expert in the subject.
- (RIBA n.d).⁴⁸

There is no pro-rata provision for part-time working. Monitoring is by random sample and failure to provide CPR records on request leads to suspension.

Equality and Diversity issues

- 130 No substantive investigation into equality and diversity in CPD as a concept has been located to date. Many of the schemes do, however, contain a commitment to equality of treatment and access to CPD and mandatory equality and diversity training as an aspect of CPD has at least been considered (BSB, 2011b). Indeed, the proposed new BSB scheme was subjected to an equality and diversity impact assessment (BSB, 2011b, p. 159) in which possible negative impacts were identified as: exclusion of waivers for the non-practising; additional cost inherent in a doubling of the number of mandatory hours (which might affect sole practitioners, "who are often, but not exclusively of BME origin" p. 160). Increased flexibility in the way in which hourages could be made up was, however, considered to counteract this, particularly for the disabled and those with caring responsibilities (p. 160). An earlier investigation into senior solicitors (Hales et al, 1998, p.4) identified barriers as including "the cost of external courses and the difficulty of access to them by solicitors working outside the main population centres", a problem, also appearing in the Australian studies (Nelson, 1993,

⁴⁸ This approach would not, then, allow for the result sometimes seen with senior practitioners attending a technical update: I learned nothing new, therefore I have confirmed that I am in fact up to date.

p.152) possibly now ameliorated by the availability of CPD on the internet. Of the non-participants in that study (p. 29) 67% identified cost, 65% time and 64% issues of travel as barriers to involvement in external courses. The more recent SRA Review (Henderson *et al*, 2012) also identified barriers of cost (81% of survey respondents), time, relevance/level and location (62%)⁴⁹ and examples of employers refusing to release time or imposing irrelevant (cheap or free) activity on employees purely to make up the hours. Solutions explored were in good quality online delivery (possibly for limited purposes such as legal updates), encouraging employer proactivity and bespoke and tailored CPD provision. IPReg (2012) with a much smaller and more specialist constituency, also explored constraints as to location (55%), cost (51%) and time (52%). 69%, however, responded that obtaining release of time from the employer was *not* a constraint.

- 131 Some of these themes appear elsewhere in the literature. Where there is a wide availability of online provision, or where experiential learning (see CPD Review Working Group 2011, p.17) in the workplace is legitimate CPD activity, such a problem may be ameliorated to a considerable extent. This might also assist with compliance for those who live and work using, for example, Welsh, Gaelic or British Sign Language. Both IPReg and the Law Society of Upper Canada considered economic and access issues for small and provincial firms in particular in their reviews of CPD. The Faculty of Advocates (n.d.) acknowledges for the self-employed bar in Scotland that “members may be on a restricted income in their first few years of practice and it is making every effort to ensure that there are sufficient courses available free of charge and at reasonable rates. Many of the special interest groups offer discounted fees for new members and some external providers may also give discounts on request”.
- 132 In terms of effectiveness and output, however, a smaller organisation may be at least as well able to encourage learning as a substantial one. So, for example, in Goodall *et al* (2005, p.2):
The research found that there was no correlation between phase, size or sector of schools which were rated as “high” in terms of the evaluation of impact of CPD. Some small schools were able to evaluate the impact of their CPD experiences at least as effectively as much larger schools: this leads to the conclusion that effective evaluation of CPD is not a factor of the size, phase or sector of the school but rather of the culture in which that CPD takes place and the processes by which it is evaluated.
- 133 The issue of equality of treatment also arises for part-time, non-working and retired members. Some of the input-oriented CPD schemes described above allow for pro-rata compliance. Others see it as axiomatic that CPD activity is at the same threshold for everyone. This is a positive strategy discussed at some length in the BSB review and in the equality impact assessment of its proposed new scheme. In medicine, similarly, the CPD Review Working Group determined that in respect of part-timers and returners “patients and the public have a right to expect that all licensed doctors remain up to date in all areas of their work, regardless of the circumstances of their practice” (2011, p.17).
- 134 A positive aspect of an input-oriented hourage scheme is, of course, that it is easier to persuade or mandate employers to release individuals for a finite pre-determined amount of external or structured activity, a point endorsed by the SRA commissioned review. In other cases, as demanded by the Royal College of Nursing and many other healthcare professions (2007, p. 4; a similar issue arising in teaching, see above): “Employers provide equal access

⁴⁹ It was perceived that opportunities to undertake CPD course were concentrated in London

to CPD, regardless of individual working patterns, to ensure that equality policies are implemented.” In the legal services, sector, however, the CILEx scheme (2011, p. 12) states:

The responsibility to undertake CPD lies with the individual member. A member’s employer is not obliged to provide them with time off from work to complete the CPD, nor is the employer obliged to fund the cost incurred by the member for undertaking CPD. Members who find themselves in such circumstances may wish to consider low cost CPD activities.

- 135 There is, in some professions such as nursing and teaching, a political dimension in encouraging return to the profession or retention of the experienced and expert, both as practitioners and as mentors or teachers (see Lammintakanen and Kivinen, 2012; Drey, Gould & Allan, 2009), to supply a deficit. Although returners may of course be male or female, it is not surprising to find the issue current in professions with a strong female workforce.⁵⁰ In accountancy, it is notable that rather than being treated as a rationale (solely) for exemption from the CPD scheme, a break from or return to practice is seen as a distinct trigger for positive refreshing activity. There may not at present be a market deficit for lawyers, but given the gender profile and statistics relating to those, usually women, who leave mid-career, this issue may come to be of greater significance for the legal professions that it perhaps occupies at present.

Themes arising from debates

- 136 A number of issues appear in the discussion above and, in this section, are shown as a series of questions for discussion. Clearly the trend in professional CPD schemes as a sector is towards cyclical and more outputs focussed approaches, with a greater emphasis on professional standards and on learning in environments other than the classroom.

Structural issues

- a) What form of recording is appropriate? Should this be of input, cycle or output? Is the objective compliance, assessment of competence or professional commitment to learning?
- b) Should recording/certification be annual or over a longer period? Should carry over be permissible?
- c) Should those not working full time be entitled to pro-rata their CPD requirement? If the scheme extends to those registered but not practising (e.g. a BPTC tutor), should the system allow such a person to comply with his or her CPD requirement by carrying out activities relevant to their actual work (in this example, in teaching)?
- d) Should different levels (greater or lower) of CPD activity be expected of more senior practitioners?
- e) Given that, “[t]he legal professions take a relatively strict view with regards [to] non-compliance with CPD obligations” (Institute of CPD, 2006, p.14), what sanctions for non-compliance should be imposed? Should they be rehabilitative or retributive? Should different sanctions be applied to more or less senior members? Who owns or has responsibility for CPD: the individual, the employer or the regulator?

In some sectors, for example medical and legal, keeping skills and knowledge up-to-date is vital to the protection of the public the members serve, making compliance with CPD a fundamental issue linked with a professional’s continued licence to operate ...In these sectors CPD requirements, compliance

⁵⁰ The views of a largely (but not exclusively) female survey population appear in Gould *et al*, 2006.

mechanisms and the approach to monitoring are different from sectors where the driver behind engaging in CPD relates more to maintaining professional expertise in order to maintain reputation and reliability.
(Institute of Continuing Professional Development, 2006, p.7)

Finding sufficient resources to provide a service the members are demanding is likely to be less onerous than continuing to find resources to support a monitoring and compliance system that ultimately works against the best interests of the profession. It is this element of CPD strategy that is most urgently in need of review by the professions if they are to create a transparent, effective CPD system that is easy to monitor, has few compliance issues, encourages good practice and is generally viewed by the membership as adding value.
(Institute of Continuing Professional Development, 2006, p.17)

- f) What equality and diversity issues arise? How can they be managed? To what extent can a CPD system promote flexibility and mobility between the professions/work sectors?

Inputs v outputs

- a) What activities should “count” for CPD purposes? Should experiential learning count?⁵¹ Should the approach be inclusionary or exclusionary? Should aspirational or speculatively relevant activity be counted (see, e.g. the CIPFA approach) if it promotes mobility? Should peer, collaborative or small group study be encouraged?
- b) To the extent that inputs are required (if at all), should they be hourage alone or weighted? As it will have been noted that the legal sector hourages are sometimes considerably lower than those of other professions, what should any minimum hourage be?

Those professions where CPD is particularly critical retain some level of inputs monitoring to ease the burden of ensuring CPD requirements are being complied with. This reluctance to transfer completely away from inputs reflects in part the inherent difficulty attached to monitoring and ensuring compliance within a fully outputs based system.
(Institute of Continuing Professional Development 2006, p.15).

- c) To the extent that outputs are required, how should they be measured? Should they be linked to COBR and professional standards of competence? Is evidence of performance of a cycle helpful in its own right or as a half-way house between measuring only the input and the challenge of seeking to measure output? To what extent can individuals be persuaded of the merits of CPD for its own sake?

Different professional bodies will place different emphases on the various purposes of CPD, and this will, ... have consequences on which CPD output measurement system is appropriate. If the purpose of CPD is mainly personal and professional development, then it may be that a system skewed towards planning and reflection is all that is required. Resources should not be expended on outcome measurement if this is the case. If the purpose of CPD is mainly maintaining competence and ensuring, or reassuring, that competence is being maintained, then output measurements on outcomes, particularly practice outcomes, are paramount. Going far along the PDV measurement dimension for planning and reflection will be less important here.

⁵¹ An extension of experiential learning is to treat it as a legitimate form of action research. See Webb, 1995; Hardy & Rönnerman, 2011).

On the other hand it may be argued that encouraging professionals to reflect and plan their CPD is important even if the emphasis is strongly on outcomes. Similarly outcomes are important even if the emphasis is on individual professionals taking responsibility for their CPD. The CPD cycle is intended as an integrated process and outputs measured by planning, outcomes and reflection may be said to complement each other in the overall achievement of PDV. (Friedman & Woodhead, 2008, p.90)

- d) To what extent do specialist accreditations and higher degrees fit into the CPD system. Should lawyers be encouraged to study for relevant higher degrees?⁵² Should specific roles require specific CPD activity (an extension to, say, management or regulation of, for example, the common domestic requirement for higher court advocates to undertake an annual diet of advocacy-related CPD)?

Accreditation and mandatory content

- a) Should there be any mandatory content? Should the profession's own COBR be part of any mandatory content? Should there be special provision for new practitioners?⁵³ Or older practitioners?
- b) Should deliberately promoting good citizenship – pro bono, teaching, examining, committee work, sustaining the organisation's own publications – be included? Should there be specific encouragement to induce individuals to supply deficits in legal services provision by accrediting pro bono activity?
- c) Should approved employer schemes be accredited? Could these be extended to specialist or geographical groups?
- d) Should regulators or professional bodies formally accredit any provision or providers? If so, what should be their minimum COBR standards (e.g. quality of tutors, existence of learning outcomes (to be distinguished from objectives) , pre-booking information, means of assessment, satisfaction feedback)?

Mutual recognition, CPD carried out elsewhere

- a) Should CPD activity carried out in another country or jurisdiction, in learning EU law or under the auspices of another CPD scheme⁵⁴ count?
- b) Should there be formal automatic mutual recognition of activity across the whole legal services sector?
- c) Is there scope for a supra-disciplinary body bringing together or providing an umbrella for all legal services sector CPD schemes or accreditation of CPD activity?
- d) Should there be a single basic CPD framework for the legal services sector as a whole?

⁵² It is notable that in an Australian study of junior lawyers 'most of the respondents were either uninterested in further formal study or inclined to value a higher degree purely as a qualification to further their careers' (Nelson, 1993: 171). A different response might be obtained, one imagines, from those later in their careers.

⁵³ By way of examples not previously mentioned, the Law Society of Hong Kong has a mandatory Risk Management Education programme for all practitioners, including foreign lawyers practising in Hong Kong (Law Society of Hong Kong, 2003). In Canada, the Law Society of the Northwest Territories requires 2 hours annually to be focussed on Legal Ethics and Practice (Law Society of the Northwest Territories, n.d.); in Ontario, management minimum of 3 mandatory accredited "professionalism hours" are required annually from a total overall requirement of 12 (Law Society of Upper Canada, 2012); and in Saskatchewan, 6 hours in each three year period must be devoted to professional responsibility, ethics, practice standards, the Code of Professional Conduct, conflict of interest, Rules of the Law Society; client care and relations; and practice management. (Law Society of Saskatchewan, 201, p. 2)

⁵⁴ The number of legal schemes which do not yet appear to have acknowledged the existence of the SRA, BSB and IPS will have been noted.

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