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REGULATING BARRISTERS

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Dear Ms Wicks

**CPD – Parental Leave**

Thank you for your e-mail of 9 January 2013. It was considered by the Qualifications Committee at its meeting on 11 February 2013.

Many barristers who take a period of parental leave suspend their practising certificate for the relevant period. This makes things very straightforward, since the CPD Regulations (Annexe C of the Code of Conduct) only require barristers to complete CPD when they hold a practising certificate. The effect of this on barristers who are on the New Practitioners' Programme ("NPP") is that the date by which they are required to complete the NPP requirements is extended by the length of time of their leave (because the requirements of the NPP must be undertaken during the first three years that a barrister holds a practising certificate). The effect on barristers who are on the Established Practitioners ("EPP") is that their CPD requirements are automatically reduced by one hour for each month that they are on parental leave (because reg 5(b) of the CPD Regulations requires a barrister on the EPP to complete one hour for each month that they hold a practising certificate).

However, many barristers choose to retain their practising certificate during parental leave. The reasons why they choose to do so are various and, in any individual case, may or may not include the fact that the barrister intends to undertake some work during their leave. If, however, a barrister holds a practising certificate, then he or she is as a matter of course subject to the obligations of holding a practising certificate, which include the CPD requirements.

As you are no doubt aware, there are strong policy reasons behind the requirement that barristers complete minimum CPD obligations. Any barrister can, however, apply to the BSB's Qualifications Committee for a waiver of or extension of time for completion of their CPD Regulations. Such applications are considered by the Committee's CPD Panel. In considering such applications, a balance is sought to be struck between the policy of requiring individual barristers to complete CPD and the individual circumstances which affect a given barrister. A very common set of circumstances is where a barrister is not practising by reason of taking parental leave, and CPD Panel has a published policy of relaxing CPD obligations in such circumstances.

The approach of the CPD Panel in cases of parental leave has always been to waive one hour of CPD for each month during which the barrister is on parental leave and is not practising. This mirrors the situation which would occur if the barrister had in fact suspended his or her practicing certificate. Where this is not sufficient to meet the CPD requirements for

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a given year, the CPD Panel's policy is to grant an extension of time in which to meet any shortfall.

Where a barrister is practising while on parental leave, the CPD panel attempts to maintain consistency between (i) its policy on parental leave where a barrister is not working and (ii) its more general policy that those in part time work and those holding themselves out as available to practice, even if not working, are subject to the full CPD obligations. The CPD Panel recognises that the two situations cannot easily be compared and treats the parental leave situation differently by offering a proportionate reduction where the barrister is providing further advice on an existing matter. For example, if the barrister worked 7 days in a month, the Panel might agree to waive 0.5 hour CPD for that month. If, however, the barrister is taking new work, and presumably holding him or herself out as available to do so, then there is an inconsistency with the taking of parental leave. The CPD Panel would generally not consider that any CPD waiver is appropriate in such a case.

Application fees are generally waived for applications to the CPD Panel which relate to parental leave. The only exceptions are where the failure to meet the CPD requirements cannot be explained by the taking of parental leave alone. For example, the barrister has taken one month's parental leave in a CPD year but has completed no CPD, a fee waiver would not usually be granted.

We note your concerns as to the lack of certainty for barristers intending to take parental leave. The BSB addresses this in two main ways. Firstly, although the CPD Panel does not grant waivers prospectively that is because circumstances may change in relation to when a barrister returns to work or as to how much work the barrister undertakes in the intervening period. The Panel will, however, give an indication of its likely approach to any barrister who makes a prospective application and will grant the application on confirmation of what has occurred. BSB staff will also indicate the Panel's likely approach in appropriate cases.

Secondly, the Panel publishes Criteria and Guidelines which set out the circumstances where an application will be granted. Although these have always referred to maternity or paternity leave as being relevant to the Panel's decision making, they have recently been amended to make the policy on parental leave explicit and clear. Para B.1.6.1 of the Criteria and Guidelines now states as follows:

*Parental Leave - Normally a waiver will be given equal to one hour for each month of parental leave during which a barrister undertakes no work up to a maximum of twelve hours for any one period of parental leave. Where a barrister does undertake some work in the course of parental leave, this should be made clear in any application of waiver. Where a barrister undertakes work on a new matter during parental leave, it will not be appropriate to claim a waiver for CPD hours for the month during which that work took place, and save for exceptional circumstances no waiver will be given in respect of that month (although waivers may be given for subsequent months). Where, however, during the course of parental leave a barrister undertakes work on an existing matter in order to provide continuity in the advice and/or representation given to the client, this will be recognised by a reduction in hours proportionate to the amount of time spent on the matter. Evidence demonstrating the continuity of the matter will be required in such a case.*

The Qualifications Committee also publishes a Fee Waiver Policy which sets out the circumstances in which a waiver from the fee for an application to the Qualifications Committee will be granted. Para 7(iv) of the Policy states as follows:

*In the case of applications for waivers or extensions of time in relation to CPD requirements, the Qualifications Committee will usually waive the application fee where the waiver or*

*extension of time sought is equivalent to the length of a break in practice on the basis of serious illness, bereavement, maternity/paternity leave or caring responsibilities for a dependent.*

It should be clear from this guidance that, where an application is made on the basis of parental leave, the barrister has not practised during the period of leave and is simply seeking a waiver equivalent to the period of time of the relevant leave (ie to put him/her in the same position as if s/he had suspended his/her practising certificate), then waivers from both the CPD and the application fee will always be granted.

However, the position is more complicated where the barrister has practised during the period of leave and/or is seeking a waiver that is greater than the period of leave. Such applications are less easily generalised and require a more specific consideration by the CPD Panel itself in light of the policies outlined above.

As such, although the CPD Panel does only consider these matters retrospectively, the barrister him/herself can be confident that if he/she does not undertake any work during their leave, then they will not be required to undertake any CPD and will not need to pay an application fee for this to be confirmed. That said, it is still advisable for barristers on parental leave to undertake some CPD as it will in all likelihood be beneficial on their return to practice.

The matter of accreditation of CPD is outside the remit of the Qualifications Committee, so I have passed your comments on this to the relevant section of the Education & Training department.

We would be happy to meet with you to discuss any matters, should you consider it helpful.

Yours sincerely



Joanne Dixon  
Manager, Qualification Regulations