

RESPONSE TO BSB CPD CONSULTATION (WORDING OF RULES AND REGULATIONS)

1. The Chancery Bar Association is one of the longest established Bar Associations and represents the interests of over 1,250 barristers. Its members handle the full breadth of Chancery work at all levels of seniority, both in London and throughout England and Wales and in cases overseas. It is recognized as a Specialist Bar Association. Full membership of the Association is restricted to those barristers whose practice consists primarily of Chancery work, but there are also academic and overseas members whose teaching, research or practice consists primarily of Chancery work.
2. The question posed is **“Do you think the proposed rules and regulations provide the necessary regulatory framework to support the new CPD scheme? Please explain your views.”**
3. In broad terms we consider that the proposed rules and regulation do provide the necessary regulatory framework to support the new CPD scheme. However, there are some points which we think the BSB should review before finalising the rules and regulations.
4. First, we consider that there is some lack of clarity in the definition of CPD within rQ130(2). The definition is as follows *“continuing professional development” (“CPD”) means work undertaken over and above the normal commitments of a barrister and is work undertaken with a view to developing the barrister’s skills, knowledge and professional standards in areas relevant to their present or proposed area of practice in order to keep the barrister up to date and maintain the highest standards of professional practice.*
5. We foresee two difficulties. One is with the word *“normal”*. We do not necessarily consider that it would be outwith the normal commitments of a barrister to undertake work to develop a barrister’s skills, knowledge and professional standards. We expect that this would be normal. We also consider that consumers would expect that to be normal too. In particular we understood this to be normal behaviour of barristers prior to the imposition of the CPD requirements upon barristers. We therefore consider that the word normal is likely to be unhelpful.
6. We think that the distinction which the BSB is trying to make here is between the legal research necessarily undertaken for a particular case in which a barrister is actually instructed and is paid for (unless it is *pro bono*) and more generic work for the purpose of increasing the skills of a barrister, e.g. going to or giving a lecture and keeping on top of current developments in case law.

7. We wondered whether this would be better expressed simply by excising the word “normal” but, in fact the giving of a talk, is a “commitment”. Therefore, on balance, we do not think this is satisfactory either. We have suggested some alternative wording below.
8. Further, it is plain from the guidance that the BSB consider that practice management is an appropriate area for CPD, so is being able to train a pupil, and in our view this should be made plain in the definition of CPD.
9. We therefore suggest the following definition for CPD

“continuing professional development” (“CPD”) means work undertaken over and above the commitments of a barrister to the barrister’s clients on their cases and is work undertaken with a view to developing the barrister’s skills, knowledge and professional standards in areas relevant to their present or proposed area of practice, including the proper running and management of that practice and providing training to pupils, in order to keep the barrister up to date and maintain the highest standards of professional practice.

NB “normal” has been deleted.

10. Secondly, we consider that it would be more user friendly to group the NPP and the EPP rules in separate sections.
11. Thirdly, we would delete the reference to “number of hours” in rQ134(1). This appears to be contrary to the new policy and also none of the guidance attached actually complies with this supposed requirement.
12. Fourthly, we would add to the Guidance on rQ133 and rQ134 that, although there is no minimum number of hours of CPD *“completing fewer than 10 hours of CPD is likely to draw additional scrutiny from our assessment team which may require justification”*. This appears at page 21 of the document the BSB has produced and is sufficiently important to appear in the formal guidance to the rule itself.
13. Fifthly, it is not clear whether comments on the more informal guidance have been solicited by the BSB, but we have the following (one fundamentally important, others nit-picking) comments:
 - a. Most importantly, we would say that a very sensible and appropriate objective (albeit generic) for any barrister is to stay up to date with changes in the law with the pretty obvious objective of making sure advice and advocacy is not out of date. This objective is one which is plainly in the public and the consumer interest. We are concerned that this example

would be too generic and unfocused to comply with the current guidance. In our view it would be a nonsense if this were the case.

- b. There are a couple of typos, “iin” for “in” and “fr” for “for”.
- c. We think that other aspects could be better phrased (and we think it is good for the BSB’s relationship with the profession for this to be improved)
 - i. In relation to advocacy there appears to be a suggestion that most advocates submit “*pleas in mitigation*” (note the difference in form between “*This includes the ability to;*” in the Advocacy section and “*This may include topics such as*” in the Practice management section.) Of course many civil advocates will never do this. We suggest either deleting the reference to pleas in mitigation or changing the formula at the beginning to “*This may include the ability to.*”
 - ii. We do not think it is quite accurate to refer to “updated authorities”, the authorities themselves are not really “updated”, we would replace “updated” with “new”.
 - iii. In relation to example 4, LPA attorneys technically uses the word attorney twice in succession (the A in LPA standing for attorney) it would be more elegant to say “attorneys acting under an LPA”. Furthermore, we would be a little surprised if one to one tuition training is likely to be readily available to meet objective 4. We suggest that if the BSB swapped the planned method of reaching objectives 3 and 4 around in this example, that would be more realistic.

Ruth Hughes and Thomas Robinson
For and on behalf of the Chancery Bar Association
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