

Consultation response

ILEX Professional Standards: CPD

Overview

1. **The purely inputs-based model of CPD has been shown to be ineffective in the legal sector, so IPS deserves credit for being the first regulator to break the mould and move towards a mixed outputs and inputs model. It is right to retain an inputs element as there are some things which should be mandated to provide assurance as to the ongoing competence of practitioners.**
2. **However, the proposals lack the critical element of testing competence and there is an overreliance on self-diagnosis as opposed to external validation. Reflecting our submission to the Legal Education and Training Review, the Panel considers CPD on its own to be an insufficient assurance of competence, which should be bolstered by mandatory reaccreditation in at least those areas of law presenting the highest quality risks.**
3. **Giving more freedom to practitioners comes with greater risks of the system being abused. Permitting ‘any learning activity’ may mean some practitioners taking CPD more seriously than others; IPS must take, and be seen to take, a tough stance against those taking a tokenistic compliance approach. Having a higher volume of documentation audits than planned would support this.**

We are pleased that non-compliance could lead to non-issuance of practising certificates and other disciplinary action.

4. **Ethics should be a compulsory annual CPD requirement, but this should be defined in a broad sense to include good client care.**
5. **IPS should develop mechanisms to assess the overall effectiveness of the new CPD regime, to help identify areas to improve and enhance accountability.**

The proposals

6. **ILEX Professional Standards (IPS) has been working on revising the Continuing Professional Development (CPD) scheme for its chartered legal executive members.**
7. **Members are currently required to undertake a number of CPD hours each year commensurate with their grade of membership. IPS has carried out research into CPD schemes in other sectors. This suggests that in order to gain the best value from participating in CPD, benefit of the activity to the member is a more effective measure than a stipulated number of hours of CPD undertaken each year. As a result, IPS has devised a new CPD system on this basis, which will:**

- Measure what the member gained from understanding CPD activities (known as ‘outputs’ measurements); and
- Require a minimum number of CPD activities which must be undertaken by members (‘inputs’ measurements).

The Panel’s response

8. The Panel examined issues around CPD in our response to the Legal Education and Training Review (LETR) and we encourage you to read that document alongside this consultation response. We made the following criticisms of the typical CPD models currently in place in the sector (therefore, this is not an analysis of the existing IPS scheme):

- They are inputs rather than outcomes-focused and are too rigid to take account of the differing experience and needs of lawyers;
- The minimum hour thresholds vary between the approved regulators, but they are low when compared to other professions;
- There is often no requirement for CPD to be related to areas of practice or identified knowledge or skill gaps;
- There are weak controls on the content of accredited CPD content with hours amassed by attending events which should not be allowed to count, such as conferences on how to maximise profit or skiing holidays;
- Even though CPD tends to be self-certified, a significant minority of lawyers do not manage to complete their required hours; and

- The usual sanctions for non-compliance – usually a slap on the wrist or a small fine – are not an effective deterrent.
9. Our LETR submission encouraged the review team to explore ‘benefits’ models of CPD that attempt to create a culture of individuals leading their own development programmes instead of being told what to do by their employer or regulator. The onus is placed on lawyers to identify personal objectives and provide hard evidence to demonstrate delivery against these objectives on an annual cycle. The corollary is that these increased freedoms are matched with tougher sanctions in the event of non-compliance, with code of conduct obligations providing a hook. Regulators too should be held to account for the success of their CPD regimes by a requirement to publish a report showing progress against performance indicators.
10. Therefore, IPS is to be congratulated for examining best practice in other schemes and being the first of the approved regulators to ‘break the mould’ in moving away from a purely inputs model. However, while the proposals are an improvement on the existing system, in our view they lack the critical element of testing knowledge or competency, and there is an overreliance on self-diagnosis as opposed to external validation. IPS will be aware that the Panel considers CPD on its own not to be a sufficient assurance of competence, which we think should be bolstered by the introduction of mandatory reaccreditation, at least in those areas of law presenting the highest quality risks to consumers.

11. This context frames our response to the consultation questions, below.

Q1. Is the new definition of CPD, in paragraph 9, fit for purpose?

12. We welcome the stronger recognition in the suggested new definition of the underlying purpose of the CPD as being to ensure consumer protection and public confidence. However, reflecting our comments above, the concept of testing and validation of CPD should be brought into this definition.

Q2. Do you agree that changing the emphasis of CPD activity to an ‘outputs’ scheme with an ‘inputs’ element will ensure that CPD will better demonstrate ongoing competence and professionalism of members? Please give reasons for your response.

13. We support the mixed model approach. As discussed above, the purely inputs-based model does not help to foster the right cultural mindset among some practitioners. CPD is too often seen as an onerous chore completed on a minimum compliance basis, rather than as a benefit to the individual and which is necessary to protect consumers. However, we also agree that it is right to retain an inputs element, at least until the new approach is demonstrated to work. This reflects our view that there are some things which should be mandated in order for regulators to be satisfied as to the ongoing competence of practitioners.
14. Repeating our earlier remarks, the key is evaluation of learning and this can only be properly done through validation or examination of learning. Moreover, the

success of the new CPD regime should also be tested at the macro level, holding IPS to account for its effectiveness. We would like IPS to develop some success criteria and indicators it will measure on a periodic basis to assess progress.

Q3. Do you agree with the changed approach to require all grades of members to make the same minimum number of entries of their CPD record? Please provide reasons for your response.

15. Yes. Chartered legal executives are specialist lawyers so it is important that they demonstrate they have kept up-to-date with latest developments in their area of law. It would be helpful if IPS provided reasons for specifying nine entries rather than any other number, as without any justification this could be viewed as just an arbitrary figure. Obviously, the effectiveness of this model depends on what can be counted as a CPD entry and, again, the extent to which a practitioner’s knowledge and skills is regularly tested and validated.

Q4. Do you agree that there should be an annual compulsory ethics requirement as part of the revised CPD scheme? Please give reasons for your response.

16. Yes. Our submission to the LETR stated that we would welcome inclusion of ethics as part of a lawyer’s training, and extending this to the CPD regime would be sensible. Professional ethics should be seen in a broad context, embracing good client care as well as adherence to the professional principles in the Legal Services Act. Thus we would encourage IPS to use a wide

definition of ethics and require members to demonstrate how they have put this consumer focus into practice and what changes this has led to, either individually or at organisational level.

Q5. Do you agree that any activity where learning has taken place should be able to be counted as CPD? Please give reasons for your response.

17. The key consideration is ensuring a range of CPD including both technical aspects and more consumer-focused development. Given the new system rightly puts more responsibility on the member self-identifying their development needs and undertaking an appropriate programme of CPD to meet these needs, there should be greater emphasis at IPS on evaluating whether the CPD undertaken was adequate.
18. Experience in the solicitors' profession suggests some CPD courses, such as those involving overseas holidays, are not sufficiently learning activities, bringing the system into disrepute. While we do not suggest that IPS seeks to accredit CPD courses, it should take a tough stance against members who try to count dubious activities as part of their CPD requirement. More generally, 'any learning activity' is very wide and no doubt some practitioners will take CPD more seriously than others. Through its supervision and enforcement work, it is vital IPS demonstrates that a 'tokenistic' approach is unacceptable. We acknowledge that the documentation that must be used to record CPD should help to mitigate these risks, but there clearly is scope for variation in standards.

Questions 5-10

19. No comment, as these questions focus on the usefulness of the guidance to members. We would only caution that, while clearly a valid aim is to make the documentation simple and straightforward to use, the main purpose of the new CPD planning and recording tools is to make the system more robust. IPS should reinforce this latter message in all its communications around the revised CPD regime.

Q11. Do you agree with the approach which IPS intends to take on sampling of members' CPD records? Please provide reasons for your response. Do you have any suggestions for the sampling process?

20. We are pleased that IPS proposes a robust approach to dealing with non-compliance, which may include non-issuance of a practising certificate and disciplinary action.
21. We support a random sampling element, although this should complement a wider risk-based approach. For example, the Panel – and the LSB's subsequent consultation paper on quality assurance – has highlighted the potential for earned recognition policies to inform risk decisions, such as the frequency of inspections. As stated in the consultation document, prior CPD performance is another indicator.
22. IPS proposes to sample 2.5% of its 14,000 members required to undertake CPD proportionately across all membership grades, of which 10% will have a telephone call to discuss their CPD record in detail. This equates to 350 documentation audits

and 35 more detailed reviews, respectively. We are concerned whether the proportion of document audits in particular will not be sufficient from a quality assurance perspective nor have a deterrent effect; we would ask IPS to give reasons for choosing this figure. Information on the diagnostic tools that IPS intends to use to assess the documentation would also be helpful to see.

23. We would encourage IPS to publish aggregate level data on CPD outcomes as a means of assessing the overall effectiveness of the new regime. This will assist IPS in making improvements and enhance its own accountability.

Q12. Do you agree that the new CPD scheme should remove the CPD exemption for members who are absent from work for more than 6 months in the CPD year?

24. Yes. What matters to consumers is their practitioner's competence, not their working patterns. If IPS considers that the CPD requirements are the minimum necessary to demonstrate competence, this should be mandatory for all types of members.

Q13. Do you consider that the proposed CPD scheme may have an adverse impact on any protected group as defined by the Equality Act 2010 or any other group? Please provide reasons for your response.

25. No comment, as this question appears to focus on impacts on professionals. We do not envisage the proposals affecting clients.

Q14. Do you agree with the substitution of 5 hours CPD focused on advocacy skills for 2 entries on advocacy skills under the new scheme? Please give reasons for your response.

26. Yes. The development of the Quality Assurance Scheme for Advocates (QASA) is recognition of a consensus about the particular quality risks in this area of law and the need to enhance consumer protection; this suggests it is sensible for IPS to retain a mandatory CPD element as part of its own quality assurance framework. Clearly, IPS will want to ensure synergies between its CPD regime and QASA.

Q15. Do you agree that IPS should reduce the requirements for Graduate members working towards Fellowship through the work based learning scheme? This will reduce the requirement from 9 entries of which 5 are recommended to be planned, to 5 planned CPD entries for each year of the 2 year period.

27. We have no objection in principle as long as the work based learning (WBL) scheme offers an equivalent substitution for CPD. However, it may be prudent to await the outcome of the WBL pilot before making a final decision on this.

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