



# **CONTINUING PROFESSIONAL DEVELOPMENT**

**A RESPONSE BY**

**THE CHARTERED INSTITUTE  
OF LEGAL EXECUTIVES**

**DATE: September 2012**

1. ILEX Professional Standards (IPS), the regulatory body of CILEx, has developed a new continuing professional development (CPD) scheme designed to measure what members gained from undertaking CPD activities (known as 'outputs' measurements). In addition, IPS will require a minimum number of CPD activities (known as the 'inputs' measurement of the scheme) which must be undertaken by members.
2. This response represents the views of The Chartered Institute of Legal Executives (CILEx), an Approved Regulator under the *Legal Services Act 2007 (the 2007 Act)*. This consultation was considered by the CILEx Council, together with feedback from members.

### **Executive Summary**

3. CILEx in principle supports the move to an outputs based system of CPD, and would like IPS to consider the recommendations in this response in the development of the scheme.
4. With the introduction of outcomes focused regulation and the increasing emphasis on consumer protection, it is essential that CILEx members are able to evidence participation in an effective annual CPD scheme.
5. An effective scheme should ensure continuing professional development and protection for the consumer which is relative to the level of membership. It is important to ensure proportionality in the proposed scheme. Otherwise, there is a danger that the requirements of the new scheme may have unforeseen consequences and may actually deter people from the CILEx route. For example, the scheme does not make clear what is expected of a 19 year old member with Level 3, particularly if that member is not doing legal work, but is on reception duties. Similarly, there appears to be an assumption that Associates and Graduates are undertaking the same work as Fellows. Whilst this may be a reasonable assumption to make in relation to Graduate members, it is not necessarily the case in relation to Associates. CILEx is concerned that there is little or

no differentiation. Evidence from practitioners is that the scheme proposed would be testing and onerous for Fellows.

6. Whilst a CPD scheme based on measuring 'outputs' for reflective learning is more likely to ensure maintenance of competence and development, it may not be suitable for all CILEx members. Given the diversity of CILEx members, reflective learning is a skill which not all CILEx members will possess, nor necessarily be an educational skill held by employers. It forms part of the key competencies but for those not accustomed to the self-evaluation or appraisal culture, the change will present challenges.
7. The following key concerns/views were highlighted by evidence from practitioners:

#### **The proposed scheme**

- Must enjoy the support of the profession;
- Must be proportionate and recognise the diverse levels of CILEx membership;
- ignores the role of employers/managers; and
- is too onerous.

#### **The proposed Handbook**

- The purpose of this document is a resource and handbook. Pages 1 and 2 are not really applicable in a handbook which is designed to tell members what they have to do to satisfy CPD;
- The focus should be 'what activities will count as CPD';
- There is currently an inadequate explanation of the scheme and the essentials for compliance (for example, more clarification as to what comprises an "activity");
- Over complex and not 'user friendly';

- Words and phrases with specific and particular meanings are not adequately explained;
  - The explanation of the components of the recording system within the scheme is confusing; and
  - In present form, it is written as a rule book for the regulator to deploy, not as a handbook for members to employ.
8. The underlying objectives of the proposed scheme are laudable and necessary. The result, however, appears excessively complex and fails to ascribe any value to the different activities, and is disproportionate.
9. Subject to the above general comments, CILEx responds to the questions in the order that they are raised.

**Question 1: Is the new definition of continuing professional development (CPD) in paragraph 9, fit for purpose?**

10. CILEx agrees that in reviewing the CPD definition it is important to have regard to the regulatory objectives of the 2007 Act. Whilst the objectives of (i) protecting and promoting the public interest; and (ii) protecting and promoting the interests of consumers are important considerations, they must not be considered in isolation to the other regulatory objectives. For example, the rule of law, access to justice, diversity and public understanding are areas where individuals have a role to play.
11. CILEx also questions whether the purpose of CPD is (i) to 'raise the demand for entry and continuing membership of the profession' and if so (ii) whether raising demand is a legitimate goal of a CPD scheme. CILEx feels that it is highly unlikely that the requirements of CPD could be viewed as attractive to entry or continuing membership of the profession. CILEx is keen to offer membership benefits that assist CILEx members to satisfy the CPD criteria, but it is not convinced that CPD should be seen as a recruiting tool. Relatedly, CILEx cannot see how this purpose as set out in paragraph 8.4 is reflected in the revised definition. It is arguable that CPD

and the proposed requirement of a revised CPD scheme will actually deter individuals from the CILEx route. Membership of CILEx is by choice and not a compulsion.

12. CILEX agrees that it is an acceptable working definition but it remains unconvinced that it is necessary to add to the existing definition by referring to the maintenance of confidence. The term 'execution' is too legalistic. We would recommend the term 'proper performance...'

**Question 2: 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 on-going competence and professionalism of members?**

13. In principle CILEx has no objections to the revised scheme save for the need to be proportionate to the grade of the member, which is amplified below.

14. It is worth noting the experiences of the General Medical Council (GMC) in relation to a CPD scheme based on measuring 'outputs', in particular as it relates to the reflective learning experience of Doctors:

- for many, reflective learning tended to be regarded as superfluous and a nuisance while actually doing it but it was regarded positively and appreciatively retrospectively. Others saw themselves as having incorporated it into their day-to-day work and not something they did in addition;
- competition between the busy-ness of service delivery and time for reflection was often cited<sup>1</sup>.

15. There is no apparent reason why the experiences of Chartered Legal Executives would be any different to the findings of the GMC.

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<sup>1</sup> [http://www.gmc-uk.org/Effectiveness\\_of\\_CPD\\_Final\\_Report.pdf\\_34306281.pdf](http://www.gmc-uk.org/Effectiveness_of_CPD_Final_Report.pdf_34306281.pdf) at page 10.

16. In its review of the relevant literature, the GMC study noted that there is 'no single or singular or correct way of doing CPD'. Significantly, the study noted, amongst other things:

- Flexibility is of vital importance in the development and provision of CPD, as are principles of justification and transparency. Active modes of learning, linking of CPD with learning needs analysis and integration of knowledge with everyday practice were major contributing factors to effective CPD;
- The boundary between CPD and quality assurance can be a grey area.

17. An 'outputs' based scheme may be initially viewed by CILEx members with a certain amount of trepidation, but when the benefits as set out in the consultation become clear, it may well be that the scheme will be viewed positively and appreciatively in retrospect. The CPD cycle (as explained in the Handbook) is useful and could be employed to guide members in planning appropriate CPD. However, the feedback from practitioners is that it is 'poorly explained' and will be 'difficult to utilise' in its present form.

18. A clear measure of 'inputs' is essential for clarity and an objective assessment of compliance. CILEx agrees that those inputs should be visibly targeted against specific activities.

**Question 3 – Do you agree with the changed approach to require all grades of members to make the same minimum number of entries on their CPD record?**

19. Paragraph 18 explicitly states that the proposed scheme will apply to all grades of membership, although later on this is clarified to mean Associate members, Graduate members and Fellows.

20. Whilst a CPD scheme based on measuring 'outputs' for reflective learning is more likely to ensure maintenance of competence and development, it may not be suitable for all CILEx members. Given the diversity of the

CILEx membership, reflective learning is a skill which not all CILEx members will possess nor necessarily be an educational or supervisory skill held by employers. Moreover, other grades of membership are either already engaged in a structured learning process which itself comprises CPD or at a junior level, they will have limited responsibilities and so should not be expected to fulfil the same level of on-going CPD as qualified lawyers. The scheme, for example, does not make clear what is expected of a 19 year old member with Level 3, particularly if that member is not doing legal work, but is on reception duties. Imposing stricter requirements on other levels of membership risks driving potential members away or slowing progression.

**Question 4: Do you agree that there should be annual compulsory ethics requirements as part of the revised CPD Scheme?**

21. CILEx agrees that there should be an annual compulsory ethics requirement as part of the revised CPD scheme. In any event, it is very likely that this issue will come out of the Legal Education & Training Review. However, steps should be taken to ensure that such mandatory training is readily accessible both physically and in terms of cost.

**Question 5: Do you agree that any activity where learning has taken place should be counted as CPD?**

22. If learning has taken place, provided it is relevant and linked to the member's practice area it should be counted as CPD. Presently, hours can be claimed for reading relevant journals and articles without evidence of any learning. However, the hours or other credit could be limited and conditional upon an example of practical application.

**Questions 6 – 9 are responded to collectively.**

**Question 6 How helpful and easy to understand do you find the guidance on the scheme which has been provided in the Handbook?**

**Question 7 Are the tools (i.e. the documents for reflection, planning and evaluation of CPD activities) accompanying the scheme helpful for planning and recording CPD?**

**Question 8 Is the Competency Framework reference document helpful for planning CPD?**

**Question 9 Do you have any other comments on the handbook?**

23. Practitioner feedback from Council members and other practitioners suggests that the handbook is not particularly easy to follow or 'user friendly'. Evidence from members is that the scheme is disproportionate and overly-complex. The guidance appears to reflect the complexity of the scheme and if a simpler scheme were devised, much of the guidance would be obsolete.

24. Some feedback based on the practical application of the test by members made the point that CPD is a continuing process, which is reflected on naturally in light of the changing demands of case load. For example, the comment was made that it is not necessarily something that should be written down in November as the position may well have changed by the following May which would then mean repeating the exercise. Similarly, flexibility will also ensure that those members that work in several areas of law or work in specific roles which do not lend themselves to a single specialist label are not disadvantaged. We would recommend the form be amended to reflect the areas in which multi-specialist members work to identify learning or development goals which cover all those areas.

25. Concern was raised by the additional forms that require completion. Guidance is useful to assist members to formulate their desired outcomes but completion of lengthy forms is excessive and onerous.

26. Members who commented on the Competency Framework reference document can see the benefit of helping members to identify areas in which to improve, but were of the opinion that it just reinforced the complexity of the whole scheme.



27. In terms of the handbook, there is no need for pages 1 and 2. In particular CILEx urges IPS to omit paragraphs 7 to 12. These are irrelevant. The focus of a handbook should be 'what activities will count as CPD', together with guiding members as to areas where they might seek to improve their work or for self-development.
28. Nine entries on a member's CPD record do seem disproportionate, especially for Graduate members who will also be undertaking work based learning, and for Associate members, as mentioned earlier.
29. Clarification is sought as to how many entries count as one entry. For example, at paragraph 14 a non-exhaustive list of appropriate activities is listed, and these include 'relevant journal activities'. How many activities count as one entry? Or 'academic or professional study' – how much study counts as one entry? Another example, 'work shadowing', is it half a day, one day or three days? Clarification would be welcome.

**Question 10: Do you agree that the CPD year should be changed from 1 January - 31 December to 1 October - 30 September?**

30. CILEx has no objections to the CPD year being changed to the proposed dates.

**Question 11: Do you agree with the approach which IPS intends to take on sampling of members' CPD records?**

31. CILEx support the approach that IPS has taken on the sampling of members CPD records with the proviso that randomness will not produce the same candidate two or more years' running. This would be very onerous on an individual member.

**Questions 12 and 13 are combined for a response.**

**Question 12: 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?**

**Question 13: Do you consider that the proposed CPD scheme may have an adverse impact on any protected group as defined by the Equality Act 2010?**

32. The scheme may have an adverse impact on those on maternity leave, those unable to work following illness or those who have been made redundant. They will be required to complete the requirements in what might be a very short space of time, which may prove exceptionally difficult. This may have implications on those members that fall within the protected characteristics of the Equality Act 2010, thus reasonable adjustments will need to be looked at. Additionally some consideration or guidance for retired Fellows would be required.

33. From a representative point of view, this lends impetus for creating wider membership benefits looking at developing opportunities for CPD and helping members as part of their membership. Similarly, CILEx can explore the opportunities for the provision of returner courses akin to the Association of Women Solicitors returner courses which would meet with IPS's approval and therefore meet CPD requirements.

**Question 14: Do you agree with the substitution of 5 hours CPD focused on advocacy skills for two entries on advocacy skills under the new scheme?**

34. Feedback from our Chartered Legal Executive Advocates is that there are very few learning opportunities for advocates and they are confined to attending courses which comprise the same content year on year. Even these courses are few and far between and to impose the requirement twice a year would be wholly disproportionate. A day course would satisfy this requirement.

**Question 15: Do you agree that IPS should reduce the requirements for Graduate members working towards Fellowship through work based learning schemes? 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 two year period?**

35. CILEx agrees that there should be a reduction in the requirements for Graduate members, together with reconsideration for Associates.