

Consultation - Training For Tomorrow: A new approach to continuing competence

Consultation questionnaire form

This form is designed to be completed electronically—in MS Word. Please save it locally before and after completing it.

Question 1

Do you foresee any impacts from option 1, positive or negative, that we have not already identified?

The Consultation Paper summarises the key positive and negative consequences of Option 1.

We agree that it is sensible to move away from a "tick box" approach. Solicitors should be given the freedom to determine the best and most appropriate continuing development steps needed to support their work and practice, both now and in the future.

However, we see a number of issues with the proposed reliance on Principle 5 which will need to be addressed if the Option 1 is the chosen way forward.

First, what will "competence" look like? Clearly, it will be different as between practitioners in different areas of specialisation but what will be the standard? Being capable of doing "today's job" or being ready to deal with whatever tomorrow or next week or next year will bring? Any scheme the SRA introduces must encourage true on-going development in the sense of improvement, not mere "maintenance" of current knowledge/skills.

We appreciate that the work on the Competency Statement may give some form of answer to that. However, the current absence of clarity on that raises concerns. Nevertheless, we realise that the timelines for these two pieces of work should mesh and so provide the necessary guidance by the time any new regime is in place.

The current Hours-based scheme has its flaws. There is the anecdotal "evidence" of individuals attending irrelevant courses simply to clock up the Hours. Furthermore, it is certainly the case that merely sitting in a classroom does not guarantee the "trainee" learns anything.

However (and accepting that attending courses is not the only "continuing development" method), the pressure to attend courses can lead to benefits aside the obvious ones of being aware of recent developments etc. It can encourage individuals to gain (relevant) knowledge which supports their existing expertise even if not strictly needed to do "today's job". It can encourage exchanges of views between experts which may be especially beneficial where the solicitor does not have access to many or any colleagues with a similar expertise or practice.

We are well aware that Option 1 will not deny solicitors the benefits outlined in the previous paragraph. However, dropping the mandatory Hours requirement may lead to some solicitors or employing organisations seeing the regime as "voluntary".

Obviously, this could mean some individuals doing no "continuing development" or employing organisations using it as an excuse for not providing the budget to engage in such development. That would be highly undesirable.

Equally, however, it could mean that, for example, individuals prioritise between their work and their development so putting the latter second in the face of financial or time pressures. This is a fact of life and it is easy to underestimate the motivational

force of explicit externally imposed requirements.

Mandatory Hours may be one solution to this problem but clear Indicative Behaviours is another.

Such Indicative Behaviours could give guidance on the type of activities in which solicitors should engage (classroom learning, online courses, reading etc); in general terms at least, on the topics on which to focus (the law, relevant practice, management development, ethics/professional standards, equality & diversity etc); on the hours it would be reasonable for a solicitor to devote to his/her on-going development (perhaps on the lines of "normally not less than XX hours").

Our view is that such Indicative Behaviours are essential as otherwise solicitors will be operating in the dark when it comes to having any sense of what is needed to ensure compliance. Without them, some may (innocently) do too little and only discover that "after the event" when they have a monitoring visit. Others may do what is objectively seen as too much (not necessarily desirable in difficult economic times) out of a concern for being seen as non-compliant.

Going on from this, how will the SRA monitor the regime? It is no criticism to say that judging competence across the profession is not something which the SRA is capable of doing given the spread of work solicitors do. Therefore, the SRA will have to rely on the certificates of compliance it will receive at the end of each CPD Year.

That on its own will bring the regime into disrepute were that to be as far as the SRA takes things. Therefore, there needs to be a mechanism for "policing" the process. Random spot checks are clearly going to be ineffective and so they need to be targetted on the basis of evidence. The nature of the evidence on which the SRA will rely must be made plain. Is it based on service complaints or on identified areas of risks or on some other basis? "After the event" only carries the risk of being too late as the damage is already done, not only to the affected clients but also to the reputation of the profession and the SRA as the regulator. Alternatively, will the SRA take proactive preventative steps?

A significant communication effort around the "enforcement" aspect of the regime would be needed if this Option is adopted. Some solicitors will not engage with the "reflective cycle" concept without understanding that it has behind it the lever of a clear regulatory obligation. Even if the solicitor and/or his/her employing organisation understands the obligations they face, some individuals and entities will need support on how to put in place systems, processes and structures which ensure compliance with the competence requirements of the new regime and it would not be unreasonable for them to expect it from the regulator.

Appealing though the greater freedom indicated undoubtedly is, the consequence of it is that there will be a plethora of potential ways of ensuring continuing competence, each one (potentially) particular to the individual solicitor. Whether or not entities currently have sophisticated training and/or performance management systems, this could represent a considerable burden on the entities and their COLPs.

Finally, while Principle 5 may be sufficient to drive all solicitors to deliver competent legal services, we do have concerns about the "look" of a leading profession apparently having no defined "CPD" scheme. While the Consultation mentions that the options do not diminish the importance of CPD as a means of ensuring effective practice, the abolition of the separate CPD scheme conveys that impression. If this

Option is adopted, communicating the reality of the approach (that it imposes serious continuing development obligations on solicitors) is essential. Consumers and commentators may begin to doubt the quality of the profession. It could also be damaging to the status of the profession on the international stage if the apparent lack of a scheme could be used by competitors as a reason for not choosing English solicitors to work on international matters. There is, therefore, some danger in not having explicit continuing professional development requirements or clear Indicative Behaviours.

Question 2

Do you foresee any impacts from option 2, positive or negative, that we have not already identified?

Again, the Paper covers the key positive and negative consequences of the Option.

While the Option ensures the profession will move away from the current "tick box" system as regards hours, it introduces what may be seen as a rigid "compulsory appraisal".

We support the idea of encouraging all solicitors to undergo regular reviews of their performance (an approach which has been the norm in CLLS member firms for many years). However, some entities might have to introduce this approach which could be burdensome in the short-term.

If the obligation is embedded in a regulatory structure, the approach could create an internal bureaucracy in some entities driven by a desire to be able to prove compliance should the SRA monitor them rather than because it was self-evidently beneficial to the business.

We have concerns about the compliance burden falling on the entity, not the individual solicitor. We believe that the most effective way of achieving compliance is to leave ultimate responsibility with the individual. Clearly though, we see that the entity has a role to play in this process but in reality it may have limited options to force compliance.

Question 3

We would welcome your views on whether or not the SRA should continue to suggest a minimum number of hours CPD for all solicitors.

We recognise the shortcomings in the current Hours-based system. Any number of Hours will be arbitrary to some extent and in and of itself a set number of Hours does not ensure "competence". What is right for one person is not right for another.

As a result and on balance, we favour dropping the mandatory Hours but would strongly advocate the introduction of the Indicative Behaviours outlined in the answer to Q. 1 above. There should also be a clear statement of the requirement on all solicitors to do continuing professional development to avoid any suggestion that the regime is voluntary.

If the mandatory Hours concept is dropped, the new regime must be designed in such a way as to ensure the disadvantages of the current scheme are avoided and the beneficial consequences of it are retained.

The mandatory Hours requirement in the current scheme does have its supporters among the CLLS member firms and across the profession for valid reasons.

It is a straightforward measure of compliance (though perhaps not of effectiveness) and can be used a lever to ensure that compliance. Some entities across the profession may reduce or cancel their training budgets without the lever of a regulatory obligation. Furthermore, that lever can ensure individuals who are reluctant to engage in developmental activities for whatever reason do comply.

If any number of mandatory Hours is retained, it is essential that there is considerable flexibility in what can count towards those Hours. It should be up to the individual solicitor and the employing entity to decide what is the right way to ensure on-going competence to support the business of the individual and the employing organisation .

Question 4

What do you see as the advantages and disadvantages of these alternative approaches to monitoring?

There is a logic in the COLP having the ultimate responsibility for compliance with these requirements. However, we would support the idea of COLPs being able to delegate responsibility for this to another person in the entity provided that it does not lead to the imposition of direct personal liability by the SRA.

In some entities, this additional burden may be minimal; in others it could be substantial.

We agree formal nomination is unnecessary.

We agree that a formal annual notification serves little purpose in the absence of rigorous enforcement processes.

Thank you for completing the **Consultation questionnaire form**.

Please save a copy of the completed form.

Please return it, along with your completed **About you form**, as an email attachment to trainingconsultations@sra.org.uk, by **2 April 2014**.

Alternatively, print the completed form and submit it by post, along with a printed copy of your **About you form**, to

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