



## Summary of Decision

The following table is a high level summary of the decision of the Legal Services Board. It is not a formal part of the decision notice.

<b>Purpose of notice</b>
To grant an application from the BSB approving alterations to its regulatory arrangements in respect of Continuous Professional Development (CPD)
<b>Alterations that are being approved by this decision</b>
<ul style="list-style-type: none"><li>• Removal of the requirement for barristers on the Established Practitioner Programme (EPP) holding a practising certificate or certificates, to complete a minimum of 12 hours of CPD during each complete calendar year</li><li>• Introducing a requirement to plan training requirements for the coming year and set specific learning objectives</li><li>• Introducing a requirement for barristers to complete a written record of the CPD activities undertaken in a given calendar year</li></ul> <p>The requirements for practising barristers on the New Practitioner Programme (NPP) are unchanged. NPP barristers must complete a minimum of 42 hours of CPD during their first three years of practice.</p>

## Decision notice

**Issued by the Legal Services Board under Part 3 of Schedule 4 to the Legal Services Act 2007**

### **The Bar Standards Board's application for approval of changes to its regulatory arrangements in respect of continuing professional development**

The Legal Services Board (**LSB**) has granted an application from the Bar Standards Board (**BSB**) approving alterations to the regulatory arrangements in respect of Continuing Professional Development (**CPD**). The Bar Council is an approved regulator and the BSB is the regulatory arm to which the Bar Council has delegated its regulatory functions.

This decision notice sets out the decision taken, including a brief description of the changes. The notes at the end of this notice explain the statutory basis for the decision. The chronology for the LSB's handling of this application is set out at the end of this decision notice.

## Proposed changes

1. The proposed changes are to the BSB's CPD requirements as follows:
  - Removal of the requirement for barristers on the EPP holding a practising certificate or certificates to undertake a minimum of 12 hours of CPD during each complete CPD year. The requirement to complete accredited activities is also removed.
  - Under the changes, barristers will need to be able to demonstrate their continuing competence to comply with Core Duty 10 which is that: "*You must take reasonable steps to manage your practice, or carry out your role within your practice, competently and in such a way as to achieve compliance with your legal and regulatory obligations [CD10]*"<sup>1</sup> [BSB Handbook](#)
  - The changes introduce responsibility of individual barristers for deciding what training they require and for setting specific learning objectives. The changes introduce a requirement to keep a written record in a CPD Plan for each calendar year, of:
    - a. the barrister's reflection on the CPD he or she has undertaken
    - b. any variation in the barrister's planned CPD activities; and
    - c. the barrister's assessment of his or her future learning objectives;

## Key issues considered in the assessment of the application

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<sup>1</sup> <https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/>

2. The LSB broadly welcomes the BSB's approach in making these changes, which have been subject to a period of policy review and public and professional consultation by the BSB. The changes are aimed at addressing weaknesses identified in the Legal Education and Training Review (LETR) report<sup>2</sup> such as the obligation to complete an arbitrary number of hours of CPD activity. We consider that the changes are also consistent with the LSB's guidance on education and training<sup>3</sup>, published in March 2014.
3. The LSB sought assurance on four key issues in its assessment:
  - Implementation and resources
  - The BSB's approach to monitoring risk
  - Review of new approach
  - Equality impact

#### *Implementation and resources*

4. The LSB raised some questions with the BSB around how the new framework would be implemented. The BSB pilot exercise had identified some additional support requirements for barristers about how the new arrangements would work in practice. Learning from the pilot also indicated that the new arrangements required more time for the BSB to assess CPD Plans. The LSB sought to reassure itself that the BSB would have in place adequate resources to support barristers in the new CPD process.
5. The BSB set out the support that would be provided to barristers in the early stages:
  - Design of good practice examples
  - An example template of a Plan and Record Card (barristers will not be mandated to use this template but feedback from the profession indicated such templates could be of assistance to them)
  - Engagement with Specialist Bar Associations to produce examples of good practice and example templates specific to practice areas.
  - Engagement with CPD providers to explain the new system and to help them support barristers
  - Providing training to staff within the Regulatory Assurance Department to ensure that there is wider capacity within the department to answer queries
  - Planned workshops early to mid 2017 for barristers to take their CPD plans to the BSB to ensure they are on the right track.

#### *Risk and monitoring*

6. The LSB also considered the BSB's approach to risk-based assessment and how individual barristers' CPD Plans would be selected for assessment. The BSB explained that its approach included:
  - A 'spot check' sample of CPD Plans from all EPP barristers to assess compliance with CPD requirements
  - Assessing a selection of CPD Plans by barristers who had been found to be non-compliant with CPD requirements in the previous year.

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<sup>2</sup> <http://www.lettr.org.uk/the-report/>

<sup>3</sup> [www.legalservicesboard.org.uk/.../20140304\\_LSB\\_Education\\_And\\_Training\\_Consultation\\_Response\\_And\\_Guidance.pdf](http://www.legalservicesboard.org.uk/.../20140304_LSB_Education_And_Training_Consultation_Response_And_Guidance.pdf)

### *Review*

7. Given the issues raised in the BSB consultation on the proposals and in the pilot exercise, the LSB sought clarification on how BSB intended to assess the impact of the new arrangements. The BSB explained that it will monitor and review implementation by producing a report that:
  - assesses the new scheme, both on its own merits by considering if the arrangements have been implemented correctly; and also by comparison against the current CPD scheme
  - includes an assessment of the impact on Equality of the new scheme (see Equality Impact below).
8. The effectiveness of this change in delivering the desired outcome of the continuing competence of barristers will depend on the effectiveness of the BSB's monitoring and supervision framework. By undertaking proactive and ongoing evaluation as intended, the LSB envisages that the BSB will be in a position to review whether the change is delivering its intended purpose. The LSB welcomes the BSB's confirmation that it will publish any review of the new arrangement's early operation. In the application the BSB anticipate that the review will be produced in mid to late 2018, after barristers have completed a full CPD year and spot checks have been carried out.

### *Equality impact*

9. We considered to what extent the BSB had considered the Public Sector Equality Duty and whether there would be any disproportionate impact on those with protected characteristics, as defined in the Equality Act 2010.
10. The application stated that the BSB carried out an Equality Impact Assessment (EIA) to support policy development on the changes. The BSB concluded that no detriment was expected to be created by the introduction of the new CPD scheme on the grounds of any of the protected characteristics. They also identified a number of anticipated benefits to the new arrangements, for example that the new arrangements are adaptable and allow for breaks in practice or for those returning practise. The BSB feels this would provide more flexibility for some members of the professions in particular those on maternity leave. The new framework increases the types of activities that are permissible as CPD and considers this makes completion easier for barristers to complete CPD activities without having to attend specific locations. The LSB is reassured that the BSB has committed to review the effects of the new approach on the profession and if any concerns are raised about the potential equality impact, the BSB will consider how best to address these.

### **Guidance**

11. Accompanying guidance to the proposed arrangements was submitted with the application, although the LSB was not being asked to approve this. The BSB intends the guidance to provide practical assistance to barristers in completing their requirements relating to CPD. The LSB is satisfied that the guidance is not a regulatory requirement as it does not place obligations on the BSB's regulated community and therefore does not require approval by the LSB under Schedule 4 of the Act.

## **Decision**

12. The LSB has considered the BSB's application against the criteria in paragraph 25(3) of Schedule 4 to the Legal Services Act 2007 (the Act). It considers that there is no reason to refuse this application; accordingly, the application is granted.
13. The Annex to this decision notice contains the specific amendments to the BSB's regulatory arrangements approved by the LSB. The version attached to this notice is presented slightly differently to that in the application, making the amendments clearer to read.

## **Chronology**

- The LSB confirmed receipt of an application from the BSB on 10 October 2016.
- The 28 day initial decision period for considering the application ended on 6 November 2016.
- This decision notice is effective from 2 November 2016.
- The decision notice will be published on our website on 4 November 2016.

**Neil Buckley, Chief Executive of the Legal Services Board**  
**2 November 2016**

*Notes:*

1. The LSB is required by Part 3 of Schedule 4 to the Act to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements.
2. Paragraph 25(3) of Schedule 4 to the Act explains that the LSB may refuse an application setting out a proposed change to the regulatory arrangements only if it is satisfied that
  - (a) granting the application would be prejudicial to the regulatory objectives
  - (b) granting the application would be contrary to any provision made by or by virtue of this Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator
  - (c) granting the application would be contrary to the public interest
  - (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator
  - (e) the alteration would enable the approved regulator to license persons under Part 5 [of the Act] to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or
  - (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.
3. The designation requirements referred to in paragraph 2(b) above are set out in paragraph 25(4) of Schedule 4 to the Act and are
  - (a) a requirement that the approved regulator has appropriate internal governance arrangements in place
  - (b) a requirement that the applicant is competent, and has sufficient resources to perform the role of approved regulator in relation to the reserved legal activities in respect of which it is designated, and
  - (c) the requirements set out in paragraphs 13(2)(c) to (e) of Schedule 4, namely that the regulatory arrangements are appropriate, comply with the requirements in respect of resolution of regulatory conflict (imposed by sections 52 and 54 of the Act) and comply with the requirements in relation to the handling of complaints (imposed by sections 112 and 145 of the Act).
4. In accordance with paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules<sup>4</sup> about the manner and form in which applications to alter regulatory arrangements must be made. Amongst other things, the rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. They also require applicants to provide information about each proposed change and details of the consultation undertaken.
5. If the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or the parts of it that can be approved.

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<sup>4</sup> Rules for Rule Change Applications – Version 2 (November 2010)

## **Changed rules to the mandatory continuing professional development requirements for barristers.**

**These proposed rules will replace the current ‘mandatory continuing professional development requirements’. They will continue to sit within Part 4.C of the Qualification rules of the Bar Standards Board Handbook.**

### **C. THE CPD RULES**

#### *The Mandatory Continuing Professional Development Requirements*

**rQ130** For the purpose of this Section 4.C:

- .1 “calendar year” means a period of one year starting on 1 January in the year in question;
- .2 "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.
- .3. "CPD Guidance" means guidance issued by the Bar Standards Board from time to time which sets out the CPD structure with which an EPP *barrister* should have regard to.
- .4 "EPP" means the Established Practitioners Programme which requires *barristers*, once they have completed the NPP, to undertake CPD during each calendar year in accordance with these Rules.
- .5 the “mandatory requirements” are those in Rules Q131 to Q138 below.
- .6 "NPP" means the New Practitioner Programme which requires barristers to complete CPD in their first three calendar years of practice in accordance with these rules.
- .7 a “*pupillage year*” is any calendar year in which a *barrister* is at any time a *pupil*.
- .8 a “learning objective” is a statement of what a *barrister* intends to achieve through their CPD activities for that calendar year with reference to a specific aim and one or more outcomes.

**rQ131** Any practising *barrister* who, as at 1 October 2001, had started but not completed the period of three years referred to in the Continuing Education Scheme Rules at Annex Q to the Sixth Edition of the Code of Conduct must complete a minimum of 42 hours of CPD during his first three years of *practice*.

#### **Guidance**

### Guidance on Rule Q131

**gQ1** Rule Q131 is intended to apply only in those limited circumstances where a *barrister* started *practice* before 1 October 2001 but after the NPP first came into force, left *practice* before completing the NPP, but has since returned. Rule Q131 requires them to finish their NPP during whatever is left of their first three years of *practice*.

**rQ132** Any practising NPP *barrister* who starts *practice* on or after 1 October 2001 must during the first three calendar years in which the *barrister* holds a *practising certificate* after any *pupillage* year complete a minimum of 45 hours of CPD.

### Guidance

#### Guidance on Rule Q132

**gQ2** NPP *barristers* should have regard to rQ137 and the NPP guidance which will note the details of any compulsory courses the NPP *barristers* must complete. It also provides guidance as to the types of activities that count towards CPD.

**rQ133** Subject to Rule Q136, any EPP *barrister* who holds a *practising certificate* or certificates during a calendar year must undertake CPD.

**rQ134** An EPP *barrister* who is required to undertake CPD must:

.1 prepare a written CPD Plan setting out the *barrister's* learning objectives and the types of CPD activities he or she proposes to undertake during the calendar year

.2 keep a written record of the CPD activities the *barrister* has undertaken in the calendar year

.3 keep a written record in the CPD Plan for each calendar year of:

- a. the *barrister's* reflection on the CPD he or she has undertaken;
- b. any variation in the *barrister's* planned CPD activities; and
- c. the *barrister's* assessment of his or her future learning objectives.

.4 Retain a record of the CPD Plan and completed CPD activities for three years.

.5 submit to the Bar Standards Board an annual declaration of completion of CPD in the form specified by the BSB

**Guidance**

**Guidance on Rules Q133 and Q134**

**gQ3,** EPP *barristers* who are required by these Rules to undertake CPD should refer to the CPD Guidance. The CPD Guidance provides further detailed information which EPP *barristers* should have regard to when planning, undertaking and recording their CPD. The CPD Guidance is not prescriptive. Its purpose is to provide a structure that would represent good practice for most *barristers* when considering their CPD requirements.

**gQ4** The CPD Guidance explains that these Rules do not specify a minimum number of CPD hours which an EPP *barrister* must undertake in a calendar year: it is the responsibility of the individual *barrister* to determine the CPD activities he or she will undertake in order meet the requirements of CPD. The Bar Standards Board will assess and monitor *barristers'* compliance with CPD.

**gQ5** The underlying principle behind the requirement to plan CPD and set learning objectives is that *barristers* consider their own circumstances and development needs when they complete CPD activities. This best ensures that activities completed contribute to the development of the barrister's practice.

**rQ135** Upon the request of the Bar Standards Board, a *barrister* must produce his or her CPD Plan and record of CPD activities for assessment.

**rQ136** Rule Q133 does not apply:

.1 in the case of a *barrister* to whom Rule Q131 applies, to any calendar year forming or containing part of the period of 3 years referred to in Rule Q131;

or

- .2** in the case of a *barrister* to whom Rule Q132 applies, during any *pupillage* year or during the first three calendar years in which the *barrister* holds a *practising certificate*.
- rQ137** The *Bar Standards Board* may, by resolution, specify the nature, content and format of courses and other activities which may be undertaken by *barristers* (or by any category of *barristers*) in order to satisfy the mandatory requirements.
- rQ138** The *Bar Standards Board* may, by resolution and after consultation with the Inns, Circuits and other providers as appropriate, vary the minimum number of hours of CPD which must be completed by an NPP *barrister* in order to satisfy any of the mandatory requirements.

## **Current CPD Rules**

The mandatory continuing professional development requirements sit within Part 4.C of the Qualification rules of the Bar Standards Board Handbook. This is currently on page 166 of the Handbook.

### **C. The CPD Rules**

#### *The Mandatory Continuing Professional Development Requirements*

**rQ130** For the purpose of this Section 4.C:

- .1 "calendar year" means a period of one year starting on 1 January in the year in question;
- .2 the "mandatory requirements" are those in Rules 0 to 0 below.
- .3 a "*pupillage year*" is any calendar year in which a *barrister* is at any time a *pupil*.

**rQ131** Any practising *barrister* who, as at 1 October 2001, had started but not completed the period of three years referred to in the Continuing Education Scheme Rules at Annex Q to the Sixth Edition of the Code of Conduct must complete a minimum of 42 hours of continuing professional development during his first three years of *practice*.

#### ***Guidance on Rules 0***

**gQ1** Rule 0 is intended to apply only in those limited circumstances where a *barrister* started *practice* before 1 October 2001 but after the New Practitioners Programme ("NPP") first came into force, left *practice* before completing the NPP, but has since returned. Rule 0 requires them to finish their NPP during whatever is left of their first three years of *practice*.

**rQ132** Any practising *barrister* who starts *practice* on or after 1 October 2001 must during the first three calendar years in which the *barrister* holds a practising certificate after any *pupillage year* complete a minimum of 45 hours of continuing professional development.

**rQ133** Subject to Rule 0, any *barrister*:

- .1 must, if he holds a practising certificate or certificates throughout the whole of any calendar year, complete a minimum of 12 hours of continuing professional development during that period; and
- .2 must, if he holds a *practising certificate* or certificate for part only of a calendar year, complete one hour of continuing professional development during that calendar year for each month for which he holds a *practising certificate*.

**rQ134** Rule Q133 does not apply:

- .1 in the case of a *barrister* to whom Rule 0 applies, to any calendar year forming or containing part of the period of 3 years referred to in Rule Q131; or
- .2 In the case of a *barrister* to whom Rule 02 applies, during any *pupillage year* or during the first three calendar years in which the *barrister* holds a *practising certificate*.

**rQ135** Any *practising barrister* must submit details of the continuing professional development he has done to the *Bar Standards Board* in the form prescribed, and at the time specified, by the *Bar Standards Board*.

**rQ136** The *Bar Standards Board* may, by resolution, specify the nature, content and format of courses and other activities which may be done by *barristers* (or by any category of *barristers*) in order to satisfy the mandatory requirements.

**rQ137** The *Bar Standards Board* may, by resolution and after consultation with the Inns, Circuits and other providers as appropriate, increase the minimum number of hours of continuing professional development which must be completed in order to satisfy any of the mandatory requirements.