



**THE RESPONSE OF THE BAR ASSOCIATION FOR COMMERCE, FINANCE
AND INDUSTRY TO THE BAR STANDARDS BOARD CONSULTATION ON
CONTINUING PROFESSIONAL DEVELOPMENT
OCTOBER 2011**

INTRODUCTION

The Bar Association for Commerce, Finance and Industry was founded in 1965 to promote the interests and professional status of barristers employed in commerce, finance and industry. BACFI is a Specialist Bar Association, affiliated to the Bar Council but operating independently to represent employed barristers practising outside chambers in commercial organisations.

BACFI is keen to play its part as a representative Specialist Bar Association (SBA) in helping to shape the development of the Bar of England and Wales, by bringing forward the views of its members and pressing for appropriate change.

BACFI actively supports the objective of an independent and high quality bar, accessible to all.

One of BACFI's principal strategic objectives is to promote educational activities, both for its members and for all new practitioners at the employed bar.

Preliminary remarks

Our comments do not cover other sectors of the employed bar, for example Government organisations such as the CPS, and the GLS. We understand that the Bar Council's Employed Barristers' Committee (which covers all sectors of the employed bar) may also make written submissions to you.

We make the following preliminary remarks:

BACFI members generally only give legal advice to their employer, therefore the public interest issues are not the same as for the self employed bar and for other sectors of the employed bar such as the CPS.

As we explained in our submission to the CPD Review Group last year, the size of the legal departments of member organisations range from sole counsel, one or two lawyer teams to large legal departments which operate like law firms.

Training budgets vary, but generally the commitment and sums of money devoted to training will be greater in the larger organisations. In smaller organisations training budgets will be limited and are very often narrowly targeted during cost cutting, so it is important that training is seen to add value.

The expectation of the employer is that the barrister will be up to date in his sphere of practice, but the employer does not always concern itself with how this is achieved.

In our 2010 submission, we argued that there should be a mandatory requirement for CPD and we are very pleased that the BSB intends to retain this. We support the BSB proposal to abolish the accreditation system and replace it with a system of verification. BACFI also welcomes the BSB's decision to encourage as many potential CPD activities as possible, and to use the Bar Council's and BSB's websites to publicise them. BACFI supports the BSB's position to leave it to the individual barrister (in conjunction with whoever he sees fit – e.g. at the employed bar with a line manager and other appropriate individuals) to determine what is appropriate and relevant CPD within the guidelines. Only the individual is in a position to know this.

We have one comment in relation to the recommendations in the Report of the CPD Working Group. In relation to para 138 and Recommendation 14, we do not agree that SBAs should be charged to advertise on the Bar Council and Bar Standards Board websites. If the BSB wishes to promote the principle of CPD, then it should encourage the advertising of relevant courses by SBAs, Inns and circuits.

In response to the specific Consultation Questions:

Q1. We agree that the fundamental approach to CPD requirements should continue to be defined by the number of hours of CPD undertaken annually. However, we do also support a qualitative approach as it is important that practitioner sees CPD as enhancing their practice rather than a tick box exercise

Evidence from our members indicates that they undertake far more hours of CPD type activities than the prescribed amount in order to perform their duties in a satisfactory manner. However, a prescribed amount demonstrates to employers and the public that the barrister takes CPD and keeping up to date seriously.

As we have previously pointed out, in most companies training is a key aspect of employee development. In large organisations, legal CPD is often part of a wider training

and personal development programme for lawyers. In such organisations, the fact that CPD is a regulatory requirement is a helpful, ensuring that at management level there is a commitment to devote time and resource to training and importantly, to allow the lawyers to devote time to training away from commercial productivity.

In smaller organisations or in any organisations where training is not considered a priority or is less valued, it is vital to enshrine CPD as a regulatory requirement. This ensures that lay employers, internal clients and other colleagues accept that CPD is an important part of the in-house lawyer's professional qualification (not an optional extra) and that time must be allowed for training as part of the working year. It allows the lawyer to stipulate his minimum training requirements and justify the costs of training to the employer organisation.

Q2. We agree with the proposed new approach to increase the range of approved CPD activities and hours per annum and that the system of reporting should be simplified.

Qs 3, 4 and 5. We welcome the more flexible definition of CPD to enable the practitioner (in consultation with colleagues as appropriate) to decide what his professional development requirements and priorities should be, and the inclusion of certain important "soft" skills such as practice management and other personal skills. A balance of activities should be undertaken, but the emphasis may vary from year to year, depending on changes to law and practice, the changing nature of the employed barrister's duties and the needs of the employer. We endorse the BSB's conclusion that any activity that serves the purposes of CPD should qualify for CPD.

Q6. No comment

Q7. We support the BSB's position as set out in paras 128 to 132 of the report and agree that there should be no waivers of CPD requirements for barristers who wish to retain their practising certificates.

Q8. Yes. We have consistently argued for a system of self accreditation and strongly endorse the BSB's proposals to do away with the accreditation system and to introduce a system of verifiable and non verifiable activities.

Many BACFI members attend courses and seminars provided by firms of solicitors and other organisations which may be accredited for SRA purposes, but not for BSB purposes. The BSB's proposals would mean this would no longer cause difficulties for our members and put them at a disadvantage compared to their solicitor colleagues.

Q9. We support the proposed new system of the Declaration. However, the declaration suggested in the draft handbook seems unnecessarily complicated.. As far as record keeping is concerned, as long as the training together with dates and hours is recorded, then there should be no prescriptive form of record keeping. Many legal departments have their own training records and we attached a sample to our Response to the CPD Review. It would also simplify record keeping if practitioners could record their CPD online. In our Response to the Wood Review we have already referred to the example of

the New York State Bar. It is not a means of ensuring compliance; rather we believe it is a better way to evidence compliance.

Qs 10 and 11. We have no specific comment on the proposal for an annual return or in relation to the forensic accounting course, although we make the comment that many employers give their legal staff extensive financial training.

However, we comment as follows on the New Practitioners (NP) section of the Consultation Paper:

- Para 163 - Gray's also runs a weekend course outside London.
- Para 164 - Inner also has a separate programme for the employed bar, as does Gray's; but Gray's will only run this when it has enough candidates to make a separate group worthwhile.
- Para 172 - The EB courses mentioned above have a completely separate set of ethics examples which are related to actual problems experienced, many of which may not be directly covered by the Code. The Ethics section of Appendix C should be amended to take account of the variety of ethics issues at the employed bar.
- Para 175 – the ATC has recently agreed a protocol for employed bar NP training and the accreditation of trainers. More generally, our position is that NP training which is not tailored to the needs of the employed barrister is of limited use. BACFI has worked with the Inns to ensure that the compulsory NP programmes for advocacy and ethics for 1-3 year employed practitioners are tailored to the needs of employed barristers. We are in dialogue with all the Inns and the ATC to achieve this. A tailored NP programme has been running for nearly 3 years at Middle Temple and Inner Temple ran their first tailored EB NPP last year. Feedback is obtained after every NPP at Middle and the practitioners tell us that the session is valuable and useful; they tell us that they learn directly relevant skills which they can take back to work to improve their day-to-day work as lawyers.

We do not agree that employed barristers should train with self-employed barristers in order to reinforce the “One Bar” concept, or in case they might switch back to being self-employed. A barrister needs skills which are of immediate relevance and in any event, skills are not developed over a weekend.

The recently approved ATC protocol relating to the provision of NP programmes for employed barristers and the training of trainers is a step in the right direction to ensuring that the NPPs for employed barristers are relevant and useful and not meaningless tick box exercises. The Inns need to do more to ensure that NPP is tailored to EB needs.

Q12. We are particularly concerned that the proposed new system will require the CPD requirements only to apply to barristers who have practising certificates. BACFI believes that “non practising” barristers who are offering non reserved legal services should also be regulated by the BSB and should be subject to the CPD rules. We know that at least some BACFI members who do not hold practising certificates, but who are practising in

the ordinary sense of the word, undertake CPD to help them keep up to date in their field and abreast of professional developments generally. It would not be onerous for them to comply with the current or proposed CPD regimes. We believe it would also promote public confidence in these barristers if they were seen to be subject to the same training requirements as the rest of the Bar.

We would be pleased to discuss these issues further.

BACFI Professional Issues Committee
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